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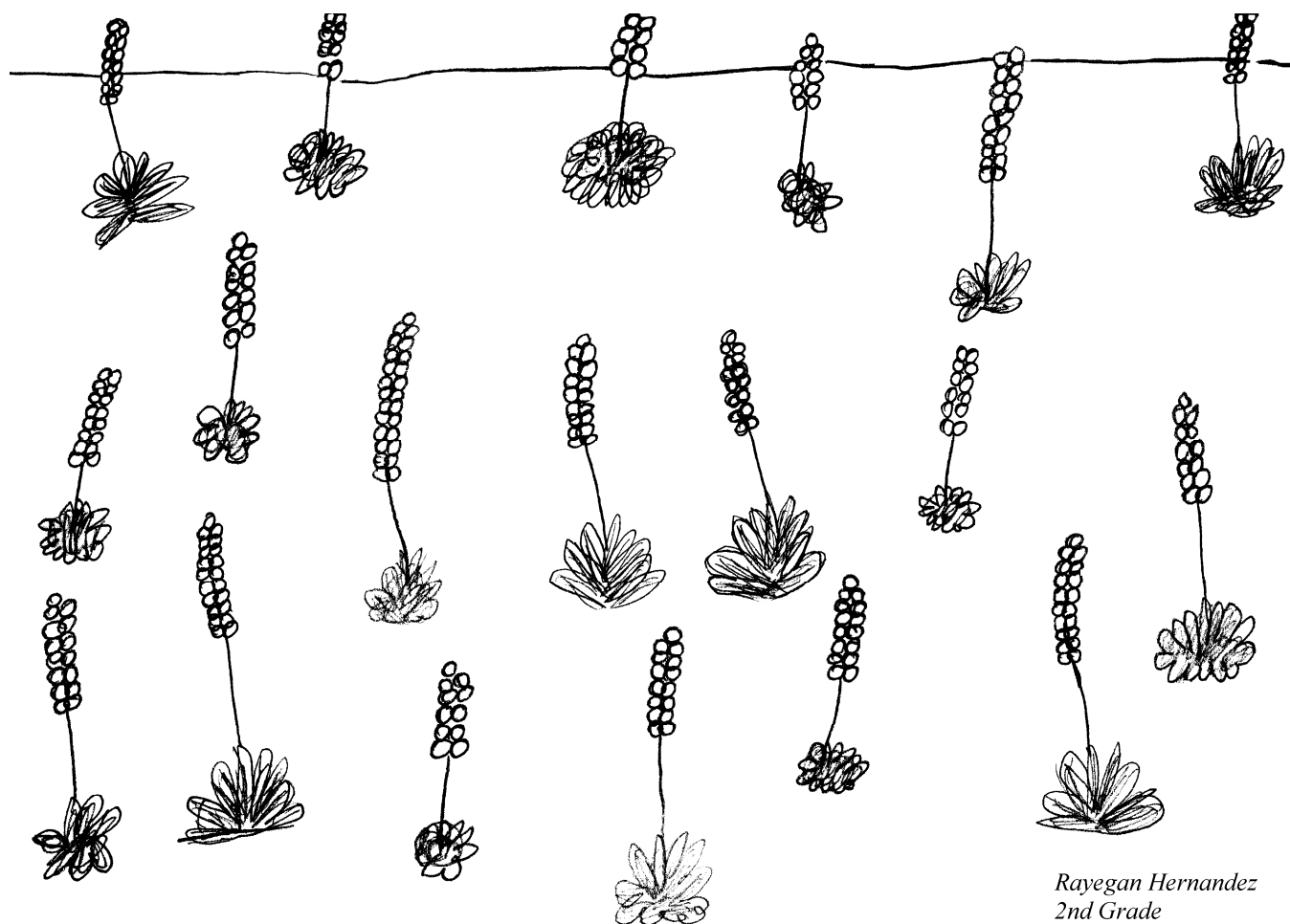
# TEXAS REGISTER

*Volume 33 Number 22*

*May 30, 2008*

*Pages 4257 - 4392*

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*Rayegan Hernandez  
2nd Grade*

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

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Office of the Secretary of State  
P.O. Box 13824  
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(512) 463-5561  
FAX (512) 463-5569

<http://www.sos.state.tx.us>  
[register@sos.state.tx.us](mailto:register@sos.state.tx.us)

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# IN THIS ISSUE

## **GOVERNOR**

Appointments.....	4263
-------------------	------

## **ATTORNEY GENERAL**

Opinions.....	4265
---------------	------

## **PROPOSED RULES**

### **COMMISSION ON STATE EMERGENCY COMMUNICATIONS**

#### POISON CONTROL CENTERS

1 TAC §254.1.....	4267
-------------------	------

### **TEXAS HEALTH AND HUMAN SERVICES COMMISSION**

#### MEDICAID HEALTH SERVICES

1 TAC §354.1863.....	4268
----------------------	------

#### REIMBURSEMENT RATES

1 TAC §355.8052.....	4269
----------------------	------

1 TAC §355.8054.....	4276
----------------------	------

1 TAC §355.8056.....	4277
----------------------	------

1 TAC §355.8061.....	4279
----------------------	------

1 TAC §355.8063.....	4280
----------------------	------

### **TEXAS DEPARTMENT OF AGRICULTURE**

#### BOLL WEEVIL ERADICATION PROGRAM

4 TAC §3.20.....	4282
------------------	------

4 TAC §3.21.....	4283
------------------	------

### **TEXAS EDUCATION AGENCY**

#### SCHOOL DISTRICTS

19 TAC §61.1028.....	4283
----------------------	------

#### PLANNING AND ACCOUNTABILITY

19 TAC §97.1001.....	4284
----------------------	------

### **TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS**

#### COMPLAINTS AND ENFORCEMENT

22 TAC §469.1.....	4286
--------------------	------

22 TAC §469.2.....	4286
--------------------	------

22 TAC §469.3.....	4287
--------------------	------

22 TAC §469.4.....	4287
--------------------	------

22 TAC §469.5.....	4288
--------------------	------

22 TAC §469.6.....	4288
--------------------	------

22 TAC §469.8.....	4289
--------------------	------

22 TAC §469.11.....	4289
---------------------	------

22 TAC §469.12.....	4290
---------------------	------

22 TAC §469.13.....	4290
---------------------	------

22 TAC §469.14.....	4291
---------------------	------

## **TEXAS COMMISSION ON FIRE PROTECTION**

### MINIMUM STANDARDS FOR FIRE INSPECTORS

37 TAC §429.3.....	4291
--------------------	------

37 TAC §429.203.....	4292
----------------------	------

### FIRE INVESTIGATION

37 TAC §431.3.....	4293
--------------------	------

37 TAC §431.203.....	4293
----------------------	------

### FIRE FIGHTER SAFETY

37 TAC §435.3.....	4294
--------------------	------

### EXAMINATIONS FOR CERTIFICATION

37 TAC §439.15, §439.17.....	4295
------------------------------	------

## **WITHDRAWN RULES**

### **TEXAS COMMISSION ON THE ARTS**

#### AGENCY PROCEDURES

13 TAC §31.5, §31.11.....	4297
---------------------------	------

#### MEMORANDA OF UNDERSTANDING

13 TAC §32.1.....	4297
-------------------	------

13 TAC §32.1.....	4297
-------------------	------

## **ADOPTED RULES**

### **COMMISSION ON STATE EMERGENCY COMMUNICATIONS**

#### ADMINISTRATION

1 TAC §§252.1, 252.2, 252.4.....	4299
----------------------------------	------

1 TAC §252.5.....	4299
-------------------	------

### **TEXAS COMMISSION ON THE ARTS**

#### AGENCY PROCEDURES

13 TAC §31.5, §31.11.....	4299
---------------------------	------

#### MEMORANDA OF UNDERSTANDING

13 TAC §32.1.....	4300
-------------------	------

13 TAC §32.1.....	4300
-------------------	------

#### A GUIDE TO OPERATIONS, PROGRAMS AND SERVICES

13 TAC §35.2.....	4300
-------------------	------

### **TEXAS DEPARTMENT OF LICENSING AND REGULATION**

#### ELEVATORS, ESCALATORS, AND RELATED EQUIPMENT

16 TAC §74.80.....	4301
--------------------	------

AIR CONDITIONING AND REFRIGERATION CONTRACTORS	22 TAC §463.24.....4322
16 TAC §75.80.....4301	22 TAC §463.26.....4323
<b>TEXAS OPTOMETRY BOARD</b>	22 TAC §463.27.....4323
GENERAL RULES	RULES OF PRACTICE
22 TAC §273.10.....4302	22 TAC §465.3.....4324
CONTINUING EDUCATION	22 TAC §465.16.....4324
22 TAC §275.1.....4302	22 TAC §465.22.....4325
THERAPEUTIC OPTOMETRY	22 TAC §465.37.....4325
22 TAC §280.8.....4303	COMPLAINTS AND ENFORCEMENT
<b>TEXAS STATE BOARD OF PHARMACY</b>	22 TAC §469.7.....4325
ADMINISTRATIVE PRACTICE AND PROCEDURES	ADMINISTRATIVE PROCEDURE
22 TAC §281.63, §281.64.....4304	22 TAC §470.9.....4326
LICENSING REQUIREMENTS FOR PHARMACISTS	<b>TEXAS REAL ESTATE COMMISSION</b>
22 TAC §§283.1, 283.2, 283.4 - 283.6.....4304	RULES RELATING TO THE PROVISIONS OF THE TEXAS TIMESHARE ACT
PHARMACIES	22 TAC §§543.2, 543.4, 543.10.....4326
22 TAC §291.104.....4307	<b>TEXAS DEPARTMENT OF INSURANCE</b>
PHARMACY TECHNICIANS AND PHARMACY TECHNICIAN TRAINEES	PROPERTY AND CASUALTY INSURANCE
22 TAC §297.7.....4310	28 TAC §5.207.....4326
SUBSTITUTION OF DRUG PRODUCTS	<b>TEXAS WATER DEVELOPMENT BOARD</b>
22 TAC §309.3.....4311	FINANCIAL ASSISTANCE PROGRAMS
<b>TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS</b>	31 TAC §363.15.....4328
GENERAL RULINGS	31 TAC §363.71.....4329
22 TAC §461.1.....4313	ADVISORY COMMITTEES
22 TAC §461.2.....4313	31 TAC §§379.1 - 379.3.....4329
22 TAC §461.5.....4314	<b>COMPTROLLER OF PUBLIC ACCOUNTS</b>
22 TAC §461.6.....4314	TAX ADMINISTRATION
22 TAC §461.7.....4314	34 TAC §§3.171 - 3.178, 3.180, 3.182 - 3.185, 3.187, 3.189, 3.190, 3.193, 3.195, 3.196, 3.200, 3.202, 3.203.....4330
22 TAC §461.13.....4315	<b>TEACHER RETIREMENT SYSTEM OF TEXAS</b>
APPLICATIONS AND EXAMINATIONS	EMPLOYMENT AFTER RETIREMENT
22 TAC §463.6.....4315	34 TAC §31.41.....4330
22 TAC §463.8.....4316	HEALTH CARE AND INSURANCE PROGRAMS
22 TAC §463.9.....4316	34 TAC §41.4.....4331
22 TAC §463.10.....4317	<b>EMPLOYEES RETIREMENT SYSTEM OF TEXAS</b>
22 TAC §463.11.....4319	INSURANCE
22 TAC §463.14.....4321	34 TAC §§81.1, 81.3, 81.7, 81.8.....4332
22 TAC §463.15.....4321	<b>TEXAS BOARD OF PARDONS AND PAROLES</b>
22 TAC §463.18.....4322	GENERAL PROVISIONS
22 TAC §463.21.....4322	37 TAC §141.61.....4333

PAROLE	
37 TAC §145.15 .....	4333
<b>DEPARTMENT OF AGING AND DISABILITY SERVICES</b>	
MENTAL RETARDATION SERVICES--MEDICAID STATE OPERATING AGENCY RESPONSIBILITIES	
40 TAC §§9.153 - 9.155, 9.160, 9.165, 9.174, 9.177, 9.185 .....	4334
40 TAC §§9.553, 9.554, 9.556, 9.558, 9.559, 9.570, 9.573, 9.577, 9.580 .....	4340
<b>DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES</b>	
PURCHASE OF GOODS AND SERVICES BY THE DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES	
40 TAC §104.255 .....	4343
40 TAC §104.301 .....	4344
<b>TEXAS VETERANS COMMISSION</b>	
ADMINISTRATION GENERAL PROVISIONS	
40 TAC §452.7 .....	4344
CONTRACT NEGOTIATION AND MEDIATION	
40 TAC §§456.1 - 456.17 .....	4344
PROTESTS OF AGENCY PURCHASES	
40 TAC §457.1 .....	4344
STATUTORY ADVISORY COMMITTEES	
40 TAC §458.1 .....	4345
40 TAC §458.2 .....	4345
40 TAC §458.3 .....	4346
<b>RULE REVIEW</b>	
<b>Proposed Rule Reviews</b>	
Texas Department of Agriculture .....	4347
Board of Tax Professional Examiners .....	4347
<b>Adopted Rule Reviews</b>	
State Board for Educator Certification .....	4348
Employees Retirement System of Texas .....	4348
Texas Board of Pardons and Paroles .....	4348
<b>IN ADDITION</b>	
<b>Comptroller of Public Accounts</b>	
Notice of Request for Proposals .....	4349
Notice of Vendor Conference .....	4349
<b>Office of Consumer Credit Commissioner</b>	
Notice of Rate Ceilings .....	4350

<b>Court Reporters Certification Board</b>	
Certification of Court Reporters .....	4350
<b>Credit Union Department</b>	
Application to Amend Articles of Incorporation .....	4350
Applications for a Merger or Consolidation .....	4350
Applications to Expand Field of Membership .....	4351
Notice of Final Action Taken .....	4351
<b>Texas Commission on Environmental Quality</b>	
Agreed Orders .....	4351
Correction of Error .....	4353
Enforcement Orders .....	4354
Notice of Meeting on July 10, 2008, in Tenaha, Shelby County, Texas Concerning the Shelby Wood Specialty, Inc. Proposed State Superfund Site .....	4358
Notice of Water Quality Applications .....	4359
<b>Texas Ethics Commission</b>	
List of Late Filers .....	4360
<b>Texas Facilities Commission</b>	
Request for Proposals #303-8-11691 .....	4360
<b>Department of Family and Protective Services</b>	
Strategic Plan for Child Abuse and Neglect Prevention Services .....	4361
<b>Texas Health and Human Services Commission</b>	
Notice of Public Hearing on Proposed Medicaid Payment Rates .....	4361
Notice of Public Hearing on Proposed Medicaid Payment Rates .....	4362
Notice of Public Hearing on Proposed Medicaid Payment Rates .....	4362
Notice of Public Hearing on Proposed Medicaid Payment Rates .....	4363
Notice of Public Hearing on Proposed Medicaid Payment Rates .....	4363
Notice of Public Hearing on Proposed Medicaid Payment Rates .....	4363
Notice of Public Hearing on Proposed Medicaid Payment Rates .....	4364
Notice of Public Hearing on Proposed Medicaid Payment Rates .....	4364
Notice of Public Hearing on Proposed Medicaid Payment Rates .....	4365
Notice of Public Hearing on Proposed Medicaid Payment Rates .....	4365
Notice of Public Hearing on Proposed Medicaid Payment Rates .....	4366
Notice of Public Hearing on Proposed Medicaid Payment Rates .....	4366
Public Notice .....	4370
<b>Texas Department of Insurance</b>	
Company Licensing .....	4370
<b>Texas Lottery Commission</b>	
Instant Game Number 1069 "Big Money Bingo" .....	4370
Instant Game Number 1070 "State Fair of Texas®" .....	4378
Instant Game Number 1094 "\$130,000,000 Platinum Payout" .....	4382

**Public Utility Commission of Texas**

Notice of Application for Amendment to Service Provider Certificate of Operating Authority.....4386

Notice of Application for a Certificate to Provide Retail Electric Service .....4387

Notice of Application for a Certificate to Provide Retail Electric Service .....4387

Notice of Application for a Certificate to Provide Retail Electric Service.....4387

Notice of Application for a Certificate to Provide Retail Electric Service.....4387

Notice of Application for a Certificate to Provide Retail Electric Service .....4388

Notice of Application for an Amendment to a State-Issued Certificate of Franchise Authority .....4388

**Supreme Court of Texas**

Order Adopting Amendments to State Bar Rules.....4388

Order Adopting Amendments to Texas Rules of Disciplinary Procedure .....4389

**The Texas A&M University System**

Notice of Entering into a Major Consulting Services Contract.....4389

**Texas Department of Transportation**

Aviation Division - Request for Proposal for Aviation Architectural/Engineering Services.....4390

Public Notice of Final Environmental Impact Statement (Grand Parkway Segment F-1, Harris County, Texas) .....4390

# THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

## Appointments

### Appointments for May 9, 2008

Appointed as the Student Regent for the University of Houston, effective June 1, 2008, for a term to expire May 31, 2009, Tamara K. Goodwin of Houston. Ms. Goodwin is replacing Christopher Sharpe of Houston whose term expired.

Appointed as the Student Regent for Midwestern State University, effective June 1, 2008, for a term to expire May 31, 2009, Haley Lain of Wichita Falls. Ms. Lain is replacing Jason A. York of Wichita Falls whose term expired.

Appointed as the Student Regent for the Texas A&M University System, effective June 1, 2008, for a term to expire May 31, 2009, Anthony Cullins of Commerce. Mr. Cullins is replacing Cassidy Daniel of Canyon whose term expired.

Appointed as the Student Regent for Texas Woman's University, effective June 1, 2008, for a term to expire May 31, 2009, Scarlett Pope of Grapevine. Ms. Pope is replacing Christianne Kellett of Arlington whose term expired.

Appointed as the Student Regent for Stephen F. Austin State University, effective June 1, 2008, for a term to expire May 31, 2009, Lacey Claver of Joshua. Ms. Claver is replacing Stephanie Tracy of Houston whose term expired.

Appointed as the Student Representative for the Higher Education Coordinating Board, pursuant to SB 1007, 80th Legislature, Regular Session, effective June 1, 2008, for a term to expire May 31, 2009, Charles Lewis, III of Houston.

Appointed as the Student Regent for Texas State University System, effective June 1, 2008, for a term to expire May 31, 2009, Nicole Lozano of Huntsville. Ms. Lozano is replacing Magdalena Manzano of Houston whose term expired.

Appointed as the Student Regent for the University of Texas System, effective June 1, 2008, for a term to expire May 31, 2009, Benjamin Dower of Austin. Mr. Dower is replacing Randal Matthew Camarillo of Houston whose term expired.

Appointed as the Student Regent for Texas Tech University System, effective June 1, 2008, for a term to expire May 31, 2009, Kelli Stumbo of Lubbock. Ms. Stumbo is replacing Ebtesam Attay Islam of Lubbock whose term expired.

Appointed as the Student Regent for Texas Southern University, effective June 1, 2008, for a term to expire May 31, 2009, Kristopher Krishna of Houston. Mr. Krishna is replacing Larry Taylor of Ferris whose term expired.

Appointed to the Correctional Managed Health Care Committee for a term to expire February 1, 2013, James Dale Griffin of Dallas. (Mr. Griffin is being reappointed). Mr. Griffin will serve as presiding officer of the commission.

Appointed to the Texas Optometry Board for a term to expire January 31, 2013, James Dyess of Austin (replacing Judy Eidson of Whitt whose term expired).

Appointed to the Texas State Board of Pharmacy for a term to expire August 31, 2013, Dennis Wiesner of Austin (replacing W. Michael Brimberry of Cedar Park whose term expired).

Appointed to the Texas State Board of Pharmacy for a term to expire August 31, 2013, Buford T. Abeldt, Sr. of Lufkin (replacing Doyle High of Austin whose term expired).

Appointed to the Texas State Board of Pharmacy for a term to expire August 31, 2013, L. Susan Kedron of Dallas (replacing Juliette F. Bartlett-Pack of Houston whose term expired).

Appointed to the Family Practice Residency Advisory Committee for a term to expire August 29, 2008, Joe M. Deason of Lufkin (replacing Loretta Patterson of San Antonio whose term expired).

Appointed to the Family Practice Residency Advisory Committee for a term to expire August 29, 2009, I. Araceli Davis of San Antonio (replacing Maria Poradek of Lubbock whose term expired).

Appointed to the Family Practice Residency Advisory Committee for a term to expire August 29, 2010, Janet B. Claborn of Muleshoe (replacing Lourdes Cuellar of Houston whose term expired).

Appointed to the State Commission on Judicial Conduct for a term to expire November 19, 2013, Karry K. Matson of Georgetown (replacing Faye W. Barksdale of Arlington whose term expired).

Appointed to the Nursing Facility Administrators Advisory Committee for a term to expire February 1, 2013, Barbara Sunderland Manouso of Houston (replacing Jerry F. Anderson of Lubbock whose term expired).

Appointed to the Nursing Facility Administrators Advisory Committee for a term to expire February 1, 2013, Michael James Keller of Plainview (replacing Mary E. Carroll of Lockhart whose term expired).

Appointed to the Nursing Facility Administrators Advisory Committee for a term to expire February 1, 2013, Donna Scott Tilley of Fort Worth (replacing Nancy Jo Handy of Hurst whose term expired).

Appointed to the Trinity River Authority Board of Directors for a term to expire March 15, 2013, James Neale of Dallas (replacing Patricia Clapp of Dallas whose term expired).

Appointed to the Trinity River Authority Board of Directors for a term to expire March 15, 2013, Nancy Lavinski of Palestine (Ms. Lavinski is being reappointed).

Appointed to the Trinity River Authority Board of Directors for a term to expire March 15, 2011, Carol Spillars of Madisonville (replacing Lynn Neely of Madisonville whose term expired).

Appointed to the Texas Guaranteed Student Loan Corporation for a term to expire January 31, 2011, Michael J. Savoie of Justin (replacing Phil Diebel of Denton who resigned).

Appointed to the Texas Guaranteed Student Loan Corporation for a term to expire January 31, 2011, Steven Wroe Jackson of Austin (replacing Sade Johnson of Houston who resigned).

Appointed to the Nueces River Authority for a term to expire February 1, 2011, Karen Bonner of Corpus Christi (replacing Ernest Garza of Robstown whose term expired).

Appointed to the Nueces River Authority for a term to expire February 1, 2013, Rebecca Bradford of Corpus Christi (replacing Patty Mueller of Corpus Christi who resigned).

Appointed to the Nueces River Authority for a term to expire February 1, 2013, Dan Leyendecker of Corpus Christi (Mr. Leyendecker is being reappointed).

#### **Appointments for May 15, 2008**

Appointed to the Executive Council of Physical Therapy and Occupational Therapy Examiners for a term to expire February 1, 2009, Arthur Roger Matson of Georgetown (replacing Susan Kedron of Dallas whose term expired).

Appointed to the Texas State Affordable Housing Corporation Board of Directors for a term to expire February 1, 2009, Robert Jones of Corpus Christi (replacing Charles Rencher of Sugar Land who resigned).

Appointed to the State Board for Educator Certification for a term to expire February 1, 2013, Stefani D. Carter of Richardson (replacing Cecilia Abbott of Austin whose term expired).

Appointed to the State Board for Educator Certification for a term to expire February 1, 2013, Sandra D. Bridges of Rockwall (replacing Judie Zinsser of Houston whose term expired).

#### **Appointments for May 16, 2008**

Appointed to the Texas Medical Board District Two Review Committee for a term to expire January 15, 2012, David Baucom of Sulphur Springs (Mr. Baucom is being reappointed).

Appointed to the Texas Medical Board District Two Review Committee for a term to expire January 15, 2012, Hari Reddy of Fairview (replacing Rodney Wiseman of Tyler whose term expired).

Appointed to the Texas Medical Board District Two Review Committee for a term to expire January 15, 2012, Melissa Tonn of Dallas (replacing Allan Shulkin of Dallas whose term expired).

Appointed to the Texas Medical Board District Two Review Committee for a term to expire January 15, 2014, Carlos Gallardo of Frisco (Mr. Gallardo is being reappointed).

Appointed to the Texas Medical Board District Four Review Committee for a term to expire January 15, 2010, Russell Parker of Austin (replacing Lorna Kithil of Marble Falls who resigned).

Appointed to the Texas Medical Board District Four Review Committee for a term to expire January 15, 2012, Richard Newman of San Antonio (replacing Peter Scholl of Austin whose term expired).

Appointed to the Texas Medical Board District Four Review Committee for a term to expire January 15, 2014, Chevy Lee of McAllen (Dr. Lee is being reappointed).

Appointed to the Texas Medical Board District Four Review Committee for a term to expire January 15, 2014, Noe Fernandez of McAllen (Mr. Fernandez is being reappointed).

Appointed to the Gulf States Marine Fisheries Commission for a term to expire March 17, 2011, David Austin McKinney of Cypress Mill (replacing Ralph Rayburn of College Station who is deceased).

Appointed to the San Antonio River Authority Board of Directors for a term until the November 2009 General Election and until his successor shall be duly elected and qualified, Jeffrey Neathery of San Antonio (replacing Louis Rowe of San Antonio who resigned).

Appointed to the School Land Board for a term to expire August 29, 2009, Todd Barth of Houston (Mr. Barth is being reappointed).

Appointed to the Texas State Board of Examiners of Dietitians for a term to expire September 1, 2011, Hawley Poinsette of Austin (replacing Eugene Wisakowsky of Dallas whose term expired).

Appointed to the Texas State Board of Examiners of Dietitians for a term to expire September 1, 2011, Dwight Sharpe of Aurora (replacing Carol Davis of Dallas whose term expired).

Appointed to the Texas State Board of Examiners of Dietitians for a term to expire September 1, 2013, Brian Irons of Lubbock (replacing Claudia Lisle of Amarillo whose term expired).

Appointed to the Texas State Board of Examiners of Dietitians for a term to expire September 1, 2013, Amy McLeod of Lufkin (Ms. McLeod is being reappointed).

Appointed to the Texas State Board of Examiners of Dietitians for a term to expire September 1, 2013, Janet Hall of Georgetown (Ms. Hall is being reappointed). Ms. Hall will serve as Presiding Officer of the board.

#### **Appointments for May 19, 2008**

Appointed to the Texas Judicial Council for a term to expire June 30, 2009, Henry Nuss of Corpus Christi (replacing Joseph Alan Callier of Kingwood whose term expired).

Appointed to the Texas Judicial Council for a term to expire June 30, 2013, Richard Figueroa of Houston (replacing Lance Richard Byrd of Dallas whose term expired).

Appointed to the Texas Judicial Council for a term to expire June 30, 2013, Allyson Ho of Dallas (replacing Elisa Martinez-Carian of San Antonio whose term expired).

Appointed to the Angelina and Neches River Authority Board of Directors for a term to expire September 5, 2011, Julie Dowell of Bullard (Ms. Dowell is being reappointed).

Appointed to the Angelina and Neches River Authority Board of Directors for a term to expire September 5, 2013, Alfred Chavira of Jacksonville (Mr. Chavira is being reappointed).

Appointed to the Angelina and Neches River Authority Board of Directors for a term to expire September 5, 2013, David King of Nacogdoches (replacing George S. Vorpahl of Lufkin whose term expired).

Appointed to the Angelina and Neches River Authority Board of Directors for a term to expire September 5, 2013, Thomas Gann of Lufkin (replacing Joe Deason of Lufkin whose term expired).

Rick Perry, Governor

TRD-200802640





# THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following:  
Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from  
the Attorney General's Internet site <http://www.oag.state.tx.us>.

Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: <http://www.oag.state.tx.us/opinopen/opinhome.shtml>.)

## Opinions

### Opinion No. GA-0627

The Honorable A.J. Hartel

Liberty County Attorney

Post Office Box 9127

Liberty, Texas 77575-9127

Re: Whether, under Tax Code section 6.035 or 6.05(g), the Liberty County Central Appraisal District Board of Directors may contract with an appraisal company that employs the son of the District's chief appraiser (RQ-0650-GA)

### S U M M A R Y

Tax Code section 6.035(a) disqualifies from employment as a chief appraiser an individual who is related within the second degree by consanguinity "to an individual who is engaged in the business of appraising property for compensation for use in proceedings under [title 1, Tax Code] or of representing property owners for compensation in proceedings under [title 1, Tax Code] in the appraisal district." Whether a chief appraiser's son is, in particular circumstances, "engaged in the business of appraising property for compensation for use in proceedings under [title 1, Tax Code] or of representing property owners for compensation in proceedings under [title 1, Tax Code] in the appraisal district" is a question of fact.

Tax Code section 6.05(g) prohibits an appraisal district from employing or contracting with "an individual . . . who is related to the chief appraiser within the first degree by consanguinity." An individual for purposes of section 6.05(g) is a natural person. Section 6.05(g) does not prohibit a contract with an appraisal company that employs the chief appraiser's son.

### Opinion No. GA-0628

Mr. Ralph J. Bernsen, Sr.

Medina County Attorney

3rd Floor, Medina County Courthouse

Hondo, Texas 78861

Re: Whether a county may terminate an equipment lease by acquiring the equipment and selling it without competitively bidding the sale (RQ-0651-GA)

## S U M M A R Y

A county that terminates a lease of a motor grader by acquiring the equipment generally must follow competitive bidding requirements before selling it to a private party.

### Opinion No. GA-0629

Ms. Ann S. Fuelberg, Executive Director

Employees Retirement System of Texas

Post Office Box 13207

Austin, Texas 78711-3207

Re: Whether an open-enrollment charter school is a governmental entity, and whether the state may enter into an agreement with the Social Security Administration on the school's behalf (RQ-0652-GA)

## S U M M A R Y

Chapter 606 of the Texas Government Code and section 218 of the Social Security Act authorize an agreement between a state and the Social Security Administration whereby Social Security coverage may be extended to employees of the state and its political subdivisions. Chapter 606 and section 218 define a political subdivision as an instrumentality of the state that is a juristic entity legally separate and distinct from the state and whose employees are not employees of the state. As determined by state law, an open-enrollment charter school is a political subdivision under chapter 606 and section 218. Accordingly, an open-enrollment charter school is an entity for which the state may enter into an agreement with the Social Security Administration.

For further information, please access the website at [www.oag.state.tx.us](http://www.oag.state.tx.us) or call the Opinion Committee at (512) 463-2110.

TRD-200802647

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: May 21, 2008

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# PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

**Symbols in proposed rule text.** Proposed new language is indicated by underlined text. ~~Square brackets and strikethrough~~ indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

## TITLE 1. ADMINISTRATION

### PART 12. COMMISSION ON STATE EMERGENCY COMMUNICATIONS

#### CHAPTER 254. POISON CONTROL CENTERS

##### 1 TAC §254.1

The Commission on State Emergency Communications (CSEC) proposes amendments to §254.1 concerning the operation and funding of regional poison centers.

##### BACKGROUND AND PURPOSE

Pursuant to Health and Safety Code, Chapter 777, CSEC and the Department of State Health Services (Department), formerly known as the Texas Department of Health, are to jointly adopt rules concerning regional poison control centers. On April 18, 2008, the Department adopted changes to 25 TAC §5.51 and §5.52. CSEC proposes amending §254.1 to reflect the changes in the Department's rules.

##### SECTION-BY-SECTION SUMMARY

The amendments reflect the post-consolidation operations of the Health and Human Services Commission and the Department of State Health Services (Department), and recognize the Amarillo Hospital District as successor to Northwest Texas Hospital.

##### FISCAL NOTE

Paul Mallett, CSEC's executive director, has determined that for each year of the first five years the amended section is in effect there will be no cost implications to the state or local governments as a result of enforcing or administering the amended sections.

##### PUBLIC BENEFIT

Mr. Mallett has determined that for each year of the first five years the amended section is in effect, the public benefits will be the elimination of possible confusion caused by outdated information in the rule. Mr. Mallett estimates no additional economic costs to persons required to comply with the rules.

##### REGULATORY ANALYSIS

CSEC has determined that this proposal is not a "major environmental rule" as defined by Government Code §2001.0225.

##### LOCAL EMPLOYMENT IMPACT STATEMENT

CSEC has determined that this proposal does not directly affect a local economy.

##### SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Mr. Mallett has determined that there will be no effect on small businesses or micro-businesses, as those terms are defined in Government Code §2003.001, required to comply with this proposal

##### TAKINGS IMPACT ASSESSMENT

CSEC has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code §2007.043.

##### PUBLIC COMMENT

Comments on the proposal may be submitted in writing to Patrick Tyler, Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942 or by email to [patrick.tyler@csec.state.tx.us](mailto:patrick.tyler@csec.state.tx.us). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

##### STATEMENT OF AUTHORITY

The amended section is proposed under Health and Safety Code §777.001(b) and §777.009(b), which require that CSEC and the Department jointly adopt rules regarding Poison Control Centers.

No other statutes, articles or codes are affected by the proposed amendment.

##### §254.1. *Operations and Funding of Poison Control Centers.*

(a) - (b) (No change.)

(c) ~~The [As required by Health and Safety Code, §777.001, the] Texas Health and Human Services (HHS) regions shall define the service areas for the Poison Control Answering Points, except where telecommunications network design would greatly increase the cost of routing the system. The regions are as follows:~~

(1) - (4) (No change.)

(5) ~~[Northwest Texas Hospital,] Amarillo Hospital District as successor to Northwest Texas Hospital--~~HHS Regions 1 and 2; and

(6) (No change.)

(d) Eligibility for funding.

(1) The entities eligible to request funding are the regional poison control centers for the state, designated under the Health and Safety Code, Chapter 777, as follows:

(A) - (D) (No change.)

(E) ~~[Northwest Texas Hospital,] Amarillo Hospital District as successor to Northwest Texas Hospital;~~ and

(F) (No change.)

(2) (No change.)

(e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 19, 2008.

TRD-200802593

Patrick Tyler

General Counsel

Commission on State Emergency Communications

Earliest possible date of adoption: June 29, 2008

For further information, please call: (512) 305-6930



## PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

### CHAPTER 354. MEDICAID HEALTH SERVICES

#### SUBCHAPTER F. PHARMACY SERVICES

#### DIVISION 4. LIMITATIONS

##### 1 TAC §354.1863

The Texas Health and Human Services Commission (HHSC) proposes to amend §354.1863, Prescription Requirements, under Title 1, Part 15, Chapter 354, Subchapter F, Division 4, relating to the new federal requirement that written prescriptions for covered outpatient drugs for Medicaid recipients must be executed on tamper-resistant prescription pads.

##### Background and Justification

Section 7002(b) of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007 (Public Law 110-28) amends section 1903(i) of the Social Security Act (42 U.S.C. §1936b(i)) by adding new paragraph (23), which states that payment shall not be made for amounts expended for (Medicaid) for covered outpatient drugs (as defined in section 1927(k)(2)) for which the prescription was executed in written (and non-electronic) form unless the prescription was executed on a tamper-resistant pad. This federal requirement becomes effective April 1, 2008.

The federal Centers for Medicare and Medicaid Services (CMS) issued implementation guidance through a letter to State Medicaid Directors on August 17, 2007 (SMDL #07-012), at <http://www.cms.hhs.gov/SMDL/downloads/SMD081707pdf>.

The CMS guidance outlines three criteria for a prescription pad to be considered tamper resistant. The pad must contain one or more industry-recognized features designed to prevent: (1) unauthorized copying of a completed or blank prescription form; (2) erasure or modification of information written on the prescription by the prescriber; and (3) use of counterfeit prescription forms. To be eligible for Medicaid reimbursement, prescription pads must meet one of these three characteristics by April 1, 2008, and must satisfy all three characteristics beginning October 1, 2008. Use of tamper resistant prescription pads is designed to reduce instances of unauthorized, improperly altered, and counterfeit prescriptions.

The CMS guidance sets out exemptions from the tamper-resistant requirement, including drugs provided in nursing facilities,

intermediate care facilities for the mentally retarded, and other institutional settings, if the prescription is written as part of a patient's medical record and the order is given by medical staff directly to the pharmacy. Also exempted from the tamper-resistant requirement are e-prescriptions transmitted to the pharmacy, prescriptions faxed to the pharmacy, or prescriptions communicated to the pharmacy by telephone by a prescriber. The tamper-resistant requirement does not apply when a managed care entity pays for the medication.

The CMS guidance indicates that pharmacies may dispense non-compliant written prescriptions on an emergency basis, if the pharmacy obtains a compliant prescription in writing or by telephone, fax, or e-prescription within 72 hours from the time of dispensing.

The implementation guidance from CMS will be included in Medicaid pharmacy policies and the pharmacy provider manual.

##### Section-by-Section Summary

The proposed new §354.1863(c) provides that, to be eligible for Medicaid reimbursement, all written (non-electronic) Medicaid-covered outpatient prescriptions must be on tamper-resistant prescription pads, as provided in section 1903(i)(23) of the Social Security Act and explained in the CMS guidance referred to above.

The current subsection (c) has been redesignated as subsection (d).

##### Fiscal Note

Thomas Suehs, Deputy Commissioner for Financial Services, has determined that during the first five year period the proposed rule is in effect there will be no significant fiscal impact to state government. The proposed rule will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

##### Small and Micro-business Impact Analysis

Mr. Suehs has also determined that there will be an effect on small businesses or micro businesses that are Medicaid providers. Providers will be required to alter their business practices as a result of the rule. The cost of the proposed tamper-resistant prescription pads is similar to the cost of the pads currently required. HHSC has determined that an economic impact analysis is not required since this rule is required under federal law and is designed to prevent Medicaid fraud. There are no significant other costs to persons who are required to comply with the proposed rule. There is no anticipated negative impact on local employment.

##### Public Benefit

Chris Traylor, Associate Commissioner for Medicaid and CHIP, has determined that for each year of the first five years the proposed amendment is in effect, the public will benefit from the adoption of the section. The anticipated public benefit, as a result of enforcing the section, will be a reduction in instances of unauthorized, improperly altered, and counterfeit prescriptions.

##### Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the

economy, productivity, competition, jobs, the environment, or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

#### Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

#### Public Comment

Written comments on the proposal may be submitted to Tania Colon, Senior Policy Analyst, Medicaid/CHIP Division, Health and Human Services Commission, at P.O. Box 85200, Austin, Texas 78708-5200; by fax to (512) 491-1953; or by e-mail to Tania.Colon@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

#### Public Hearing

A public hearing is scheduled for June 10, 2008 from 1 p.m. to 3 p.m. in the HHSC Lone Star Conference Room, at 11209 Metric Boulevard, Austin, Texas 78758. Persons requiring further information, special assistance, or accommodations should contact Rene Williams at (512) 491-1162.

#### Statutory Authority

The amendment is proposed under the Texas Government Code, §531.033, which provides the Commissioner of HHSC with broad rulemaking authority; and the Human Resources Code, §32.021, and the Texas Government Code, §531021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The proposed amendment affects the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

#### §354.1863. *Prescription Requirements.*

(a) Payment for pharmaceuticals can be made only when these pharmaceuticals are prescribed by a practitioner licensed to prescribe legal drugs.

(b) The pharmacist must ensure that the original prescription conforms to the Texas State Board of Pharmacy rules concerning the records to be maintained by a pharmacy. A signed prescription must be maintained in the dispenser's file and available for audit at any reasonable time. Telephone orders, where legal, must be documented in writing. The name of the prescriber and the signature of the dispensing pharmacist must be documented. If a pharmacy maintains prescription records in a data processing system, a hard copy of the prescription must be retained on file unless the daily log includes all the information required in §351.1901 of this title (relating to Pharmacy Claims). The provider must conform to all regulations issued by the Drug Enforcement Administration and Texas State Board of Pharmacy concerning the recording of prescriptions in a data processing system.

(c) Effective April 1, 2008, prescriptions for covered pharmaceuticals submitted to a pharmacy in written form will be eligible for payment only if the prescription is executed on tamper-resistant prescription paper, as required by §1903(i)(23) of the Social Security Act (42 U.S.C. §1936b(i)(23)).

(d) [(e)] The dispensing pharmacist must date the prescription and initial the refills.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 14, 2008.

TRD-200802524

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: June 29, 2008

For further information, please call: (512) 424-6900



## CHAPTER 355. REIMBURSEMENT RATES SUBCHAPTER J. PURCHASED HEALTH SERVICES

### DIVISION 4. MEDICAID HOSPITAL SERVICES

#### 1 TAC §355.8052

The Texas Health and Human Services Commission (HHSC) proposes new §355.8052, concerning Inpatient Hospital Reimbursement. Section 355.8052 will supersede the Medicaid inpatient hospital reimbursement methodology within 1 TAC §355.8063 for hospitals other than children's hospitals, state-owned teaching hospitals, and freestanding psychiatric hospitals.

#### Background and Justification

This proposed new rule is part of a larger revision to Medicaid inpatient hospital reimbursement rules. Elsewhere in this issue of the *Texas Register*, HHSC contemporaneously proposes new §355.8054 and §355.8056; and amendments to §355.8061 and §355.8063.

HHSC has undertaken a rewrite of 1 TAC §355.8063, Reimbursement Methodology for Inpatient Hospital Services. As part of the rewrite, HHSC is creating separate rules for different hospital provider types based on specific reimbursement methodologies. Proposed new §355.8052 describes the prospective payment system methodology used to reimburse hospitals other than children's hospitals, state-owned teaching hospitals, and freestanding psychiatric hospitals. HHSC also is updating language in the new rule (taken largely from §355.8063) to language HHSC hopes will allow the reader to better understand the complex processes used in hospital reimbursement.

In addition, House Bill 1 directed HHSC to rebase inpatient hospital rates, for which the Legislature appropriated \$150 million general revenue for fiscal year 2009 (2008-2009 General Appropriations Act, Article II, Special Provisions, Section 57(c), 80th Legislature, Regular Session, 2007). HHSC is adding language to the new rule to accomplish the rebasing.

The proposed new rule will become effective for claims approved for payment for admissions on or after September 1, 2008. The methodology in §355.8063 will continue to apply to claims approved for payment through state fiscal year 2008.

The language in the new rule differs from the language in §355.8063 in several ways. The significant changes are that §355.8052:

Includes a six-month cut off date after a base year for adjudicated claims that constitute the base year data set used in the rebasing process.

Updates the factors HHSC will use to inflate rebasing claims data.

Lists additional rebasing data elements that are not subject to appeal.

Removes the requirement that HHSC must rebase or inflate standard dollar amounts on a set schedule.

Adds definitions to improve clarity.

Groups rule subject matter by the flow of the reimbursement process for ease of understanding.

Limits the final payment division standard dollar amounts to available appropriated funds.

#### Section-by-Section Summary

Proposed §355.8052(a) applies the general reimbursement method described in this section to inpatient hospital payments for admissions on or after September 1, 2008. This subsection is a revision of §355.8063(a) and adds a requirement that HHSC send provider notification letters concerning standard dollar amounts.

Proposed §355.8052(b) identifies the hospital provider types that are not covered by this rule but that are covered in proposed new §355.8054 and §55.8056 or in existing §355.8063. All of these provider types were previously included in §355.8063.

Proposed §355.8052(c) adds definitions that apply to this section and §355.8054 and §355.8056.

Proposed §355.8052(d) explains processes used to calculate the payment division standard dollar amount (PDSA) used in the reimbursement formula for each hospital. Proposed §355.8052(d) also explains the limitations on the calculation of PDSA, including the time period for the calculation and the level of appropriations. Proposed subsection (d)(3) - (5) outlines the steps used to calculate the hospital-specific standard dollar amount (HSDA). Proposed subsection (d)(6) - (11) describe the PDSA process and exceptions to the process.

Proposed §355.8052(e) describes the diagnosis-related groups (DRG) statistical calculations and their application to hospital reimbursement.

Proposed §355.8052(f) describes the process for providers to request a review of their PDSA calculation, specifying the items in the PDSA calculation eligible for a review and the items not eligible for review.

Proposed §355.8052(g) describes the calculation of claims reimbursement. This section reorganizes language from §355.8063 to clarify hospital claim reimbursement.

Proposed §355.8052(h) describes how to file cost reports.

Proposed §355.8052(i) identifies certain providers that are excepted from the prospective payment system (PPS). The reimbursement for these excepted providers is the greater of the PPS amount or the provider's cost.

#### Fiscal Note

Thomas M. Suehs, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the proposed rule is in effect there will be a fiscal impact

to state government of \$356,124,392 for state fiscal year (SFY) 2009; \$347,619,208 for SFY 2010; \$347,619,208 for SFY 2011; \$347,619,208 for SFY 2012; and \$347,619,208 for SFY 2013 as a result of rebasing certain hospitals' inpatient payment rates. The proposed rule will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

#### Small and Micro-business Impact Analysis

Mr. Suehs has also determined that there will be no effect on small businesses or micro businesses to comply with the proposal, as they will not be required to alter their business practices as a result of the rule. There are no anticipated economic costs to persons who are required to comply with the proposed rule. There is no anticipated negative impact on local employment.

#### Public Benefit

Carolyn Pratt, Director of Rate Analysis, has determined that for each year of the first five years the proposed rule is in effect, the public will benefit from the adoption of the amendment. The anticipated public benefit, as a result of enforcing the amendment, will be to provide for a consistent rate methodology that can be more easily understood.

#### Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

#### Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

#### Public Comment

Written comments on the proposal may be submitted to Chris Dockal, Rate Analyst in the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, MC-H400, Austin, Texas 78708-5200; by fax (512) 491-1983 or by e-mail at Chris.Dockal@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

#### Statutory Authority

The new rule is proposed under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The proposed rule affects the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

#### §355.8052. Inpatient Hospital Reimbursement.

- (a) Application and general reimbursement method.

(1) The prospective payment system described in this section applies to inpatient hospital payments for admissions beginning in Fiscal Year (FY) 2009.

(2) HHSC calculates reimbursement for a covered inpatient hospital service, determined in subsection (g) of this section, by multiplying the hospital's payment division standard dollar amount, determined in subsection (d) of this section, by the relative weight for the appropriate diagnosis-related group, determined in subsection (e) of this section.

(3) HHSC will send a hospital an initial notification letter describing the hospital-specific and payment division standard dollar amounts, determined in subsection (d) of this section. HHSC will send a hospital a final notification letter reporting the payment division standard dollar amount, adjusted as described in subsection (d)(2) of this section, to be used in calculating the hospital's reimbursements to be paid for admissions beginning in FY 2009.

(4) HHSC will rebase hospital-specific and payment division standard dollar amounts in subsequent years when funds are appropriated for that purpose.

(b) Exceptions. The prospective payment system described in this section does not apply to the following types of hospitals for covered inpatient hospital services:

(1) In-state and out-of-state children's hospitals. In-state and out-of-state children's hospitals are reimbursed using the methodology described in §355.8054 of this chapter (relating to Children's Hospital Reimbursement Methodology).

(2) State-owned teaching hospitals. A state-owned teaching hospital is reimbursed in accordance with the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) principles using the methodology described in §355.8056 of this chapter (relating to State-Owned Teaching Hospital Reimbursement Methodology).

(3) Freestanding psychiatric hospitals. A freestanding psychiatric hospital is reimbursed under the methodology described in §355.8063 of this chapter (relating to Reimbursement Methodology for Inpatient Hospital Services).

(c) Definitions. When used in this section, and §355.8054 and §355.8056 of this chapter, the following words and terms will have the following meanings, unless the context clearly indicates otherwise.

(1) Adjudicated The approval or denial of an inpatient hospital claim by HHSC.

(2) Average base year cost per claim--One factor used in arriving at the hospital-specific standard dollar amount; the arithmetic mean of base year costs per claim for a hospital, obtained by dividing the sum of all base year costs per claim for that hospital by the number of base year claims in the set.

(3) Base year--A period of 12 consecutive months selected by HHSC.

(4) Base year claims--All Medicaid inpatient hospital claims for reimbursement filed by a hospital that:

(A) Have a date of admission occurring within the base year;

(B) Are adjudicated and approved for payment during the base year and the six-month grace period that immediately follows the base year or another period designated by HHSC and communicated in writing to all hospitals;

(C) Are not claims for patients who are covered by Medicare; and

(D) Are not Medicaid spend-down claims.

(5) Base year cost per claim--One factor used in arriving at the hospital-specific standard dollar amount; the cost for a claim that would have been made to a hospital if HHSC reimbursed the hospital under methods and procedures used in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), described in subsection (d)(3)(A) of this section.

(6) Case mix index--The average relative weight of a hospital's base year claims, obtained by summing the hospital's relative weights for all base year claims divided by the total number of that hospital's base year claims.

(7) Cost-of-Living Index--An adjustment applied to hospital-specific standard dollar amounts based on the Market Basket Index to account for changes in cost of living.

(8) Cost outlier payment adjustment--A payment adjustment for a claim with extraordinarily high costs.

(9) Cost outlier threshold--One factor used in determining the cost outlier payment adjustment.

(10) Data entry error--An error resulting from mis-keyed or mistyped data that is different from the intended entry. This type of error does not include the omission of claims approved for payment after the base year and grace period.

(11) Day outlier threshold--One factor used in determining the day outlier payment adjustment.

(12) Day outlier payment adjustment--A payment adjustment for a claim with an extended length of stay.

(13) Diagnosis-related group (DRG)--The classification of medical diagnoses as defined in the Medicare DRG system or as otherwise specified by HHSC.

(14) Final settlement--Reconciliation of cost in the Medicare/Medicaid hospital fiscal year end cost report performed by HHSC within six months after HHSC receives the cost report audited by a Medicare intermediary, or in the case of children's hospitals, audited by HHSC.

(15) HHSC--The Texas Health and Human Services Commission or its designee.

(16) Hospital-specific standard dollar amount (HSDA)--One factor used in arriving at the payment division standard dollar amount (PDSDA); the average base year cost per claim for a hospital, adjusted by the case mix index and cost-of-living index.

(17) In-state children's hospital--A hospital located within Texas that is recognized by Medicare as a children's hospital and is exempted by Medicare from the Medicare prospective payment system.

(18) Interim payment--An initial payment made to a hospital that is later settled to Medicaid-allowable costs, for hospitals reimbursed under methods and procedures in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA).

(19) Interim rate--The ratio of Medicaid allowed inpatient costs to Medicaid allowed inpatient charges filed on a hospital's Medicare/Medicaid cost report, or inpatient cost-to-charge ratio, expressed as a percentage. The interim rate established at tentative settlement includes incentive and penalty payments associated with TEFRA target caps to the extent that they continue to be permitted by federal law and regulation.

(20) Market Basket Index--The Centers for Medicare and Medicaid Services (CMS) projection of the annual percentage increase in hospital inpatient operating costs, as defined in 42 C.F.R. §413.40.

(21) Mathematical error--An error that results from the erroneous application of variables, quotients, or functions within a methodology formula resulting in a different result than intended methodology results. This type of error does not include the omission of claims approved for payment after the base year and grace period.

(22) Mean length of stay (MLOS)--One factor used in determining the payment amount calculated for each diagnosis related group; for each diagnosis related group, the average number of days that a patient stays in the hospital.

(23) Military hospital--A hospital operated by the armed forces of the United States.

(24) New hospital--A hospital that was newly constructed and enrolled as a Medicaid provider after the end of the base year.

(25) Newly enrolled hospital--A hospital that was assigned a new Texas Provider Identification number (TPI) and was enrolled as a Medicaid provider after the end of the base year.

(26) Out-of-state children's hospital--A hospital located outside of Texas that is recognized by Medicare as a children's hospital and is exempted by Medicare from the Medicare prospective payment system.

(27) Payment division--A group of hospitals whose calculated hospital-specific standard dollar amounts fall within a \$100 range, where the \$100 increments begin at zero.

(28) Payment division standard dollar amount (PDSDA)--The weighted average dollar amount per claim calculated for all hospitals in a payment division.

(29) Relative weight--The weighting factor HHSC assigns to a diagnosis related group representing the time and resources associated with providing services for that diagnosis related group.

(30) State-owned teaching hospital--The following hospitals: University of Texas Medical Branch (UTMB); University of Texas Health Center Tyler; and M.D. Anderson Hospital.

(31) TEFRA cost for rebasing--One factor used in arriving at the hospital-specific standard dollar amount; Medicaid allowable charges for base year claims adjusted to cost by the interim rate derived from tentative or final settlement of cost reports that cover time periods in the base year.

(32) TEFRA target cap--A limit set under the Social Security Act §1886(b) (42 U.S.C. §1395ww(b)) and applied to the cost settlement for a hospital reimbursed under methods and procedures in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). TEFRA target cap is not applied to patients under age 21, and incentive and penalty payments associated with this limit are not applicable to patients under age 21.

(33) Tentative settlement--Reconciliation of cost in the Medicare/Medicaid hospital fiscal year-end cost report performed by HHSC within six months after HHSC receives an acceptable cost report filed by a hospital.

(34) Universal Mean--Average base year cost per claim for all hospitals.

(35) Weighted hospital-specific standard dollar amount (HSDA)--One factor used in arriving at the payment division standard dollar amount; the product obtained by multiplying a hospital's hos-

pital-specific standard dollar amount by the number of its base year claims.

(d) Payment Division Standard Dollar Amount (PDSDA).

(1) HHSC recalculates PDSDAs for payments in FY 2009 using FY 2006 base year claims. HHSC will not include claims that are adjudicated and approved for payment after the base year and subsequent six-month grace period. The six-month grace period is intended to allow inclusion of as many base year claims as possible, given practical time constraints.

(2) Limitation based on available funds. PDSDAs are adjusted proportionately among hospitals based on the amount of available funds. HHSC may adjust the PDSDAs at any time if it determines that the estimated payments will not approximate the amount of available funds.

(3) Hospital-specific standard dollar amount (HSDA). Using base year claims, HHSC calculates an HSDA for each hospital as follows:

(A) Determines for each claim, the base year cost per claim, which is the greater of:

(i) the amount of TEFRA cost for rebasing, which is calculated under paragraph (10) of this subsection; or

(ii) payments from other insurance;

(B) Sums the dollar amount for each hospital's base year costs per claim determined in subparagraph (A) of this paragraph;

(C) Calculates the average base year cost per claim by dividing the result in subparagraph (B) of this paragraph by the total number of base year claims for the hospital;

(D) Calculates the case mix index by summing the hospital's relative weights for all base year claims divided by the total number of that hospital's base year claims;

(E) Divides the average base year cost per claim determined in subparagraph (C) of this paragraph by the hospital's case mix index determined in subparagraph (D) of this paragraph; and

(F) Multiplies the result in subparagraph (E) of this paragraph by the cost-of-living index described in paragraph (4) of this subsection to adjust costs from the base year to the rate year, which results in the HSDA.

(4) Cost-of-Living Index. HHSC updates HSDAs by applying a cost-of-living index to the HSDA established for the base year. HHSC uses the CMS Prospective Payment System Hospital Market Basket Index based on a federal fiscal year adjusted to a state fiscal year.

(5) Payment Divisions. HHSC groups hospital HSDAs into payment divisions by one-hundred-dollar (\$100) increments beginning at zero. For example, all hospitals with HSDAs between \$1,600.00 and \$1,699.99 are grouped together.

(6) Payment Division Standard Dollar Amount (PDSDA).

(A) HHSC computes a PDSDA for all hospitals within a payment division as follows:

(i) multiplies each hospital's HSDA by the hospital's total number of base year claims, resulting in a weighted HSDA;

(ii) sums the weighted HSDAs determined in clause (i) of this subparagraph for all hospitals within a payment division; and

(iii) divides the result in clause (ii) of this subparagraph by the total number of base year claims for all hospitals within a payment division, which results in the PDSDA.

(B) The PDSDA calculation does not include data from the following types of hospitals:

- (i) out-of-state hospitals;
- (ii) military hospitals;
- (iii) new or newly enrolled hospitals;
- (iv) in-state and out-of-state children's hospitals;
- (v) inpatient psychiatric hospitals; and
- (vi) state-owned teaching hospitals.

(C) If a payment division has fewer than 20 total base year claims, HHSC considers that payment division to be statistically invalid. Hospitals within that payment division are assigned a PDSDA equal to the mathematically closest valid PDSDA.

(7) Minimum PDSDA. The minimum PDSDA of \$1,600.00 is applied to any hospital with an HSDA equal to or less than \$1,600.00.

(8) PDSDA calculation for specific types of hospitals.

(A) The following types of hospitals are assigned the Universal Mean plus the cost-of-living update as specified in paragraph (4) of this subsection, as their PDSDA:

- (i) military hospitals;
- (ii) out-of-state hospitals; and
- (iii) newly enrolled hospitals.

(B) New Hospitals.

(i) For new hospitals, HHSC will assign a PDSDA that is three percentile points higher than the Universal Mean in an array of base year costs per claim, plus the cost-of-living update as specified in paragraph (4) of this subsection. This rate applies for five years from enrollment as a new Medicaid hospital or until HHSC recalculates PDSAs, whichever is earlier. After five years from enrollment, if HHSC has not recalculated PDSAs, the hospital's PDSDA will be the Universal Mean.

(ii) A replacement facility constructed for a hospital that is currently enrolled as a Medicaid provider is reimbursed by using either the PDSDA of the existing provider or the PDSDA for new hospitals, whichever is greater.

(9) Merged hospitals.

(A) When two or more Medicaid participating hospitals merge during or after the base year but before the date of HHSC's final PDSDA notification letter, HHSC combines the amounts determined in paragraph (3)(A) of this subsection for all hospitals involved in the merger and calculates the HSDA and PDSDA for the merged entity as described for all other hospitals in this subsection.

(B) When two or more Medicaid participating hospitals merge after the base year and after the date of HHSC's final PDSDA notification letter, HHSC combines the original base year costs per claim determined in paragraph (3)(A) of this subsection from the most recent rebasing period for all hospitals involved in the merger. HHSC calculates a new HSDA for the merged entity and assigns a PDSDA equal to the mathematically closest valid PDSDA.

(C) Acquisitions and buyouts do not result in a recalculation of the PDSDA of an acquired hospital unless acquisitions or

buyouts result in the purchased or acquired hospital becoming part of another Medicaid participating provider. The acquired hospital will continue being reimbursed based on the PDSDA applied before the acquisition or buyout.

(10) TEFRA Cost for Rebasing. HHSC adjusts base year claims to arrive at a result based on cost reimbursement principles described in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), and calculates TEFRA cost for rebasing as follows:

(A) HHSC adjusts each hospital's base year claims using the interim rate computed as a result of tentative or final cost reports covering the base year. The adjustments are applied to claims in months within the base year that coincide with months within the hospital's cost reporting periods.

(B) The TEFRA cost for rebasing is calculated by multiplying the Medicaid allowed charges for each base year claim by the interim rate described in subparagraph (A) of this paragraph.

(C) HHSC uses the tentative or final cost report settlement that is complete and available on the date HHSC sends the initial PDSDA notification letter to the hospital. The results of a tentative or final cost report settlement completed after the date HHSC sends the initial PDSDA notification letter to the hospital are not considered for purposes of this subsection.

(D) If there is no tentative or final cost report settlement available, the TEFRA cost for rebasing is calculated using an assigned interim rate of 50 percent.

(11) Correction of payment division error and reprocessing of claims.

(A) HHSC will place a hospital in the correct payment division if HHSC determines that the hospital was incorrectly assigned to a payment division due to a mathematical error or data entry error by HHSC.

(B) HHSC will reprocess all claims adjudicated during that state fiscal year that were paid to the hospital using the incorrect PDSDA by applying the corrected PDSDA to the claims. No corrections are made for claims adjudicated in previous state fiscal years.

(e) Diagnosis Related Groups (DRGs) Statistical Calculations. HHSC adopts the classification of diagnoses defined in the Medicare DRG prospective payment system unless a revision is required based on Texas claims data or other factors, as determined by HHSC. HHSC recalibrates the relative weights, mean length of stay, and day outlier threshold whenever the PDSAs are recalculated.

(1) Recalibration of relative weights. HHSC calculates a relative weight for each DRG as follows:

(A) Base year claims are grouped by DRG;

(B) For each DRG, HHSC:

(i) sums the base year costs per claim as determined in subsection (d)(3)(A) of this section;

(ii) divides the result in clause (i) of this subparagraph by the number of claims in the DRG; and

(iii) divides the result in clause (ii) of this subparagraph by the Universal Mean, resulting in the relative weight for the DRG.

(2) Recalibration of mean length of stay (MLOS). HHSC calculates a mean length of stay (MLOS) for each DRG as follows:

(A) Base year claims are grouped by DRG;



(B) For each DRG, HHSC:

(i) sums the number of days billed for all base year claims;

(ii) divides the result in clause (i) of this subparagraph by the number of claims in the DRG, resulting in the MLOS for the DRG.

(3) Recalibration of day outlier thresholds. HHSC calculates a day outlier threshold for each DRG as follows:

(A) Calculates for all claims the standard deviations from the MLOS in paragraph (2) of this subsection;

(B) Removes each claim with a length of stay (number of days billed by a hospital) greater than or equal to three standard deviations above or below the MLOS. The remaining claims are those with a length of stay less than three standard deviations above or below the MLOS;

(C) Sums the number of days billed by all hospitals for a DRG for the remaining claims in subparagraph (B) of this paragraph;

(D) Divides the result in subparagraph (C) of this paragraph by the number of remaining claims in subparagraph (B) of this paragraph;

(E) Calculates one standard deviation for the result in subparagraph (D) of this paragraph; and

(F) Multiplies the result in subparagraph (E) of this paragraph by two and adds that to the result in subparagraph (D) of this paragraph; resulting in the day outlier threshold for the DRG.

(4) If a DRG has fewer than ten base year claims, HHSC will assign the corresponding Medicare relative weight and Medicare mean length of stay and will calculate the day outlier threshold based on the Medicare mean length of stay and standard deviation.

(5) If one of the DRGs specific to an organ transplant has less than five base year claims, HHSC will assign the corresponding Medicare relative weight and Medicare mean length of stay and will calculate the day outlier threshold based on the Medicare mean length of stay and standard deviation. In addition, HHSC adds a relative weight to account for the cost of procuring the organ to the Medicare relative weight for the DRG. HHSC uses the organ procurement costs published by the Acquisition of Organ Procurement Organization (AOPO). To calculate the relative weight for procurement, HHSC divides the average cost of organ procurement by the universal mean for all claims.

(f) Request for Review. Except as otherwise provided in this subsection, HHSC uses the following process for reviews and appeals.

(1) If a hospital believes that HHSC made a mathematical error or data entry error in calculating the hospital's PDSDA, the hospital may request a review of the disputed calculation.

(A) A review of the calculation of a hospital's PDSDA will not be granted if the disputed calculation is the result of the hospital's submission of incorrect data or the result of the use of an interim rate derived from a cost reporting period occurring before the base year.

(B) The hospital must submit to HHSC a written request for review and appropriate specific documentation supporting its contention that there has been a mathematical or data entry error. The written request for review must be printed on the hospital's letterhead. HHSC Rate Analysis must receive a written request for an informal review by hand delivery, United States (U.S.) mail, or special mail delivery no later than 45 calendar days from the date of the initial PDSDA notification letter. If the 45th calendar day is a weekend day, national

holiday, or state holiday, then the first business day following the 45th calendar day is the final day the receipt of the written request will be accepted. HHSC will not grant extensions of the 45-day deadline.

(C) If the hospital disagrees with the outcome of the review, the hospital may formally appeal in accordance with §§357.481 - 357.490 of this title (relating to Hearings Under the Administrative Procedure Act).

(2) A hospital may not appeal the elements of the prospective payment methodology used by HHSC, including:

(A) the payment division methodologies, including the HSDA and PDSDA calculations;

(B) the DRGs assigned through claims adjudication;

(C) the DRGs assigned to base year claims as a result of HHSC updating to a new version of the Medicare DRGs;

(D) the relative weights assigned to the DRGs;

(E) the adequacy of payments;

(F) the exclusion of claims that were not adjudicated and paid within the base year or six-month grace period; and

(G) the interim rate, computed as a result of tentative or final cost reports covering the base year that are completed after the date HHSC sends the initial PDSDA notification letter to the hospital.

(g) Reimbursements

(1) Calculating the payment amount. HHSC reimburses a hospital a prospective payment for covered inpatient hospital services by multiplying the PDSDA for the hospital's payment division by the relative weight for the DRG assigned to the adjudicated claim. The resulting amount is the payment amount to the hospital.

(2) The prospective payment as described in paragraph (1) of this subsection is considered full payment for covered inpatient hospital services. A hospital's request for payment in an amount higher than the prospective payment will be denied. The PDSDA result in subsection (d) of this section includes but is not limited to the following:

(A) capital costs;

(B) cost of indirect medical education;

(C) cost of malpractice insurance; and

(D) return on equity.

(3) Day and cost outlier adjustments. HHSC pays a day outlier or a cost outlier for medically necessary inpatient services provided to clients under age 21 in all Medicaid participating hospitals that are reimbursed under the prospective payment system. If a patient age 20 is admitted to and remains in a hospital past his or her twenty-first (21st) birthday, inpatient days and hospital charges after the patient reaches age 21 are included in calculating the amount of any day outlier or cost outlier payment adjustment.

(A) Day outlier payment adjustment. HHSC or its designee calculates a day outlier payment adjustment for each claim as follows:

(i) determines whether the number of medically necessary days allowed for a claim exceeds:

(I) the MLOS by more than two days; and

(II) the DRG day outlier threshold as calculated in subsection (e)(3)(F) of this section;

(ii) if clause (i) of this subparagraph is true, subtracts the DRG day outlier threshold from the number of medically necessary days allowed for the claim;

(iii) multiplies the DRG relative weight by the PDSDA;

(iv) divides the result in clause (iii) of this subparagraph by the DRG MLOS described in subsection (e)(2) of this section, to arrive at the DRG per diem amount;

(v) multiplies the number of days in clause (ii) of this subparagraph by the result in clause (iv) of this subparagraph;

(vi) multiplies the result in clause (v) of this subparagraph by 70 percent.

(B) Cost outlier payment adjustment. HHSC makes a cost outlier payment adjustment for an extraordinarily high-cost claim as follows:

(i) to establish a cost outlier, the cost outlier threshold must be determined by first selecting the lesser of the Universal Mean of base year claims multiplied by 11.14 or the hospital's PDSDA multiplied by 11.14;

(ii) the full DRG prospective payment amount is multiplied by 1.5;

(iii) the cost outlier threshold is the greater of clause (i) or (ii) of this subparagraph;

(iv) the cost outlier threshold is subtracted from the amount of reimbursement for the claim established under cost reimbursement principles described in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA); and

(v) the result in clause (iv) of this subparagraph is multiplied by 70 percent to determine the amount of the cost outlier payment.

(C) If an admission qualifies for both a day outlier and a cost outlier payment adjustment, HHSC pays the higher outlier payment.

(4) A hospital may submit a claim to HHSC before a patient is discharged, but only the first claim for that patient will be reimbursed the prospective payment described in paragraph (1) of this subsection. Subsequent claims for that stay are paid zero dollars. When the patient is discharged and the hospital submits a final claim to ensure accurate calculation for potential outlier payments for clients younger than 21 years of age, HHSC recoups the first prospective payment and issues a final payment in accordance with paragraphs (1) and (3) of this subsection.

(5) Patient transfers and split billing. If a patient is transferred, HHSC establishes payment amounts as specified in subparagraphs (A) - (D) of this paragraph. HHSC manually reviews transfers for medical necessity and payment.

(A) If the patient is transferred from a hospital to a nursing facility, HHSC pays the transferring hospital the total payment amount of the patient's DRG.

(B) If the patient is transferred from one hospital (transferring hospital) to another hospital (discharging hospital), HHSC pays the discharging hospital the total payment amount of the patient's DRG. HHSC calculates a DRG per diem and a payment amount for the transferring hospital as follows:

(i) multiplies the DRG relative weight by the PDSDA;

(ii) divides the result in clause (i) of this subparagraph by the DRG MLOS described in subsection (e)(2) of this section, to arrive at the DRG per diem amount; and

(iii) to arrive at the transferring hospital's payment amount;

(I) multiplies the result in clause (ii) of this subparagraph by the lesser of the DRG MLOS, the transferring hospital's number of medically necessary days allowed for the claim, or 30 days; or

(II) for a patient under age 21, multiplies the result in clause (ii) of this subparagraph by the lesser of the DRG MLOS or the transferring hospital's number of medically necessary days allowed for the claim.

(C) HHSC makes payments to multiple hospitals transferring the same patient by applying the per diem formula in subparagraph (B) of this paragraph to all the transferring hospitals and the total DRG payment amount to the discharging hospital.

(D) HHSC performs a post-payment review to determine if the hospital that provided the most significant amount of care received the total DRG payment. If the review reveals that the hospital that provided the most significant amount of care did not receive the total DRG payment, an adjustment is initiated to reverse the payment amounts. The transferring hospital is paid the total DRG payment amount and the discharging hospital is paid the DRG per diem.

(h) Cost reports. Each hospital must submit an initial cost report at periodic intervals as prescribed by Medicare or as otherwise prescribed by HHSC.

(1) Each hospital must send a copy of all cost reports audited and amended by a Medicare intermediary to HHSC within 30 days after the hospital's receipt of the cost report. Failure to submit copies or respond to inquiries on the status of the Medicare cost report will result in provider vendor hold.

(2) HHSC uses data from these reports in rebasing years, in making adjustments as described in subsection (d) of this section, and in completing cost settlements for children's hospitals and state-owned teaching hospitals as outlined in §355.8054 and §355.8056 of this chapter.

(3) Except as otherwise specified in subsection (i) of this section, there are no cost settlements for inpatient services under the prospective payment system in this section.

(4) The cost settlement process is limited by the TEFRA target cap.

(i) Hospitals in counties with 50,000 or fewer persons and certain other hospitals.

(1) Hospitals are reimbursed under this subsection if, as of the most recent decennial census, the hospital is:

(A) located in a county with 50,000 or fewer persons;

(B) a Medicare-designated Rural Referral Center (RRC) or Sole Community Hospital (SCH) not located in a metropolitan statistical area (MSA), as defined by the U.S. Office of Management and Budget; or

(C) a Medicare-designated Critical Access Hospital (CAH).

(2) A hospital that qualifies under this subsection is reimbursed for a cost reporting period the greater of:

(A) All Medicaid payments based on the prospective payment system; or

(B) The cost-reimbursement methodology described in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) without the imposition of the TEFRA target cap described in subsection (h)(4) of this section.

(3) The amounts in this subsection are calculated using the most recent data for Medicaid Fee-for-Service (FFS) and Primary Care Case Management (PCCM) inpatient services.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 19, 2008.

TRD-200802595

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: June 29, 2008

For further information, please call: (512) 424-6900



## 1 TAC §355.8054

The Texas Health and Human Services Commission (HHSC) proposes new §355.8054, concerning Children's Hospital Reimbursement Methodology. Section 355.8054 will supersede the children's hospital reimbursement methodology within 1 TAC §355.8063(o) and (r).

### Background and Justification

This proposed new rule is part of a larger revision to Medicaid inpatient hospital reimbursement rules. Elsewhere in this issue of the *Texas Register*, HHSC contemporaneously proposes new §355.8052 and §355.8056; and amendments to §355.8061 and §355.8063.

This proposed new rule will supersede the children's hospital reimbursement methodologies at §355.8063(o) (in-state children's hospitals) and §355.8063(r) (out-of-state children's hospitals). This rule will separate the Medicaid reimbursement methodologies for children's hospitals into a stand-alone rule to clarify definitions, processes, and timing related to children's hospital reimbursement. The proposed new rule will become effective for claims approved for payment for admissions in state fiscal year 2009. The requirements in §355.8063(o) and (r) will continue to apply to claims approved for payment through state fiscal year 2008.

The new rule will distinguish the TEFRA (Tax Equity and Fiscal Responsibility Act of 1982) cost-based reimbursement methodology for in-state children's hospitals from the prospective payment reimbursement methodology for other hospitals, which is proposed new §355.8052, Inpatient Hospital Reimbursement Methodology. Additionally, the new rule includes the language from §355.8063(r), regarding the reimbursement methodology for out-of-state children's hospitals, which is derived from the in-state children's hospital methodology.

The rule language for in-state and out-of-state children's hospital reimbursement contained in this new rule is substantially the same as the language in §355.8063(o) and (r) with the exception of changes noted below.

## Section-by-Section Summary

Proposed new §355.8054(a) is a revision of the current §355.8063(o), regarding the reimbursement methodology for in-state children's hospitals. This revision clarifies and is substantially the same as the provisions of §355.8063(o) except for the following change. Section 355.8054(a)(5)(D) explains how HHSC will increase a hospital's TEFRA target cap in years in which the cap is not reset. In those years, the target cap will be adjusted for cost of living based on changes in the CMS Prospective Payment System Hospital Market Basket Index adjusted to the hospital's fiscal year. By contrast, in §355.8063(o), the cost-of-living index is the greater of the CMS Prospective Payment System Hospital Market Basket Index or the lesser of two measures related to changes in total charges per case or the Texas medical consumer price index-urban.

Proposed new §355.8054(b) is a revision of the current rule at §355.8063(r), regarding the reimbursement methodology for out-of-state children's hospitals. This revision clarifies and is substantially the same as the provisions of §355.8063(r). Proposed new §355.8054(b) continues the existing HHSC practice of not revising the payment rates for out-of-state children's hospitals by specifying that out-of-state children's hospitals will not have their rates adjusted in state fiscal year 2009 or thereafter.

### Fiscal Note

Thomas M. Suehs, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the proposed rule is in effect there will not be a fiscal impact to state. The proposed rule will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs as a result of this rule.

### Small and Micro-business Impact Analysis

Mr. Suehs has also determined that there will be no effect on small businesses or micro businesses to comply with the proposal, as they will not be required to alter their business practices as a result of the rule. There are no anticipated economic costs to persons who are required to comply with the proposed rule. There is no anticipated negative impact on local employment.

### Public Benefit

Carolyn Pratt, Director of Rate Analysis, has determined that for each year of the first five years the proposed new rule is in effect, the public benefit of the adoption of the rule is the clarification of the reimbursement methodology for children's hospitals.

### Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

### Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

## Public Comment

Written comments on the proposal may be submitted to Chris Dockal, Senior Rate Analyst in the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, MC-H400, Austin, Texas 78708-5200; by fax (512) 491-1983 or by e-mail at [Chris.Dockal@hhsc.state.tx.us](mailto:Chris.Dockal@hhsc.state.tx.us) within 30 days of publication of this proposal in the *Texas Register*.

## Statutory Authority

The new section is proposed under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The proposed rule affects the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

### §355.8054. Children's Hospital Reimbursement Methodology.

#### (a) In-state children's hospitals.

(1) HHSC or its designee reimburses in-state children's hospitals under methods and procedures described in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA).

(2) For dates of admission on or after September 1, 2003, children's hospitals with allowable Direct Graduate Medical Education (DGME) costs will receive a pro rata share of their annual DGME cost based on available funds appropriated specifically for this purpose.

(3) Interim payments are determined by multiplying a hospital's charges allowed under Medicaid by the interim rate effective on the date of admission. The interim rate is derived from the hospital's most recent tentative or final Medicaid cost report settlement.

(4) The amount and frequency of interim payments will be subject to the availability of funds appropriated for that purpose. Interim payments are subject to settlement at both tentative and final audit of a hospital's cost report.

#### (5) Cost Settlement.

(A) The cost settlement process is limited by the TEFRA target cap set pursuant to the Social Security Act §1886(b) (42 U.S.C. §1395ww(b)).

(B) Notwithstanding the process in subparagraph (A) of this paragraph, HHSC or its designee uses each hospital's final audited cost report, which covers a fiscal year ending during a base year period, for calculating the TEFRA target cap for a hospital.

(C) HHSC or its designee selects a new base year period for calculating the TEFRA target cap at least every three years.

(D) HHSC or its designee increases a hospital's TEFRA target cap in years in which the target cap is not reset under this paragraph, by multiplying the target cap by the CMS Prospective Payment System Hospital Market Basket Index adjusted to the hospital's fiscal year.

(E) For a newly recognized children's hospital, the base year period for calculating the TEFRA target cap is the hospital's first full 12-month cost reporting period occurring after the effective date of recognition. For each cost reporting period after the hospital's base year period, an increase in the TEFRA target cap will be applied as described in subparagraph (D) of this paragraph, until the TEFRA target cap is recalculated in subparagraph (C) of this paragraph.

(6) After a Medicaid participating hospital is recognized by Medicare as a children's hospital, the hospital must submit written notification to HHSC's designee's provider enrollment contact, including documents verifying its status as a Medicare children's hospital. Upon receipt of the written notification from the hospital, HHSC or its designee will convert the hospital to the reimbursement methodology described in this subsection retroactive to the effective date recognized by Medicare.

(b) Out-of-state children's hospitals. HHSC or its designee calculates the prospective payment rate for an out-of-state children's hospital as follows:

(1) HHSC determines the overall average cost per discharge for all in-state children's hospitals by:

(A) Summing the Medicaid allowed cost from tentative or final cost report settlements for the base year; and

(B) Dividing the result in subparagraph (A) of this paragraph by the number of in-state children's hospitals' base year claims described in §355.8052(c)(4) of this title (relating to Inpatient Hospital Reimbursement).

(2) HHSC determines the average relative weight for all of in-state children's hospitals' base year claims described in §355.8052(c)(4) of this title by:

(A) Assigning a relative weight to each claim pursuant to §355.8052(e)(1)(B)(iii) of this title;

(B) Summing the relative weights for all claims; and

(C) Dividing by the number of claims.

(3) The result in paragraph (1) of this subsection is divided by the result in paragraph (2) of this subsection to arrive at the adjusted cost per discharge.

(4) The adjusted cost per discharge in paragraph (3) of this subsection is the payment rate used for payment of claims.

(5) The payment rate is not adjusted for inflation.

(6) HHSC will not recompute the adjusted cost per discharge effective September 1, 2008 or thereafter.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 19, 2008.

TRD-200802596

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: June 29, 2008

For further information, please call: (512) 424-6900



## 1 TAC §355.8056

The Texas Health and Human Services Commission (HHSC) proposes new §355.8056, concerning State-Owned Teaching Hospital Reimbursement Methodology. Section 355.8056 will supersede the Medicaid inpatient hospital reimbursement methodology for state-owned teaching hospitals at 1 TAC §355.8063.

Background and Justification

This proposed new rule is part of a larger revision to Medicaid inpatient hospital reimbursement rules. Elsewhere in this issue of the *Texas Register*, HHSC contemporaneously proposes new §355.8052 and §355.8054; and amendments to §355.8061 and §355.8063.

This proposed new rule will change the Medicaid reimbursement methodology for state-owned teaching hospitals from the current prospective payment reimbursement methodology in §355.8063 to a TEFRA cost-based reimbursement methodology. Creating a new rule for state-owned teaching hospitals will distinguish the TEFRA methodology from the prospective payment methodology used for most other hospitals, which is set out in proposed new rule §355.8052. The proposed new rules will become effective for claims approved for payment in state fiscal year 2009. The methodology in §355.8063 will continue to apply to claims approved for payment through state fiscal year 2008.

Because HHSC will change the reimbursement methodology for state-owned teaching hospitals beginning in state fiscal year 2009, these hospitals will be excluded from rate recalculation for state fiscal year 2009. State-owned teaching hospitals will be reimbursed their cost for inpatient hospital services based on their cost report filed at the end of the first state fiscal year after this rule becomes effective. The state-owned teaching hospitals' initial interim rate will be based on their most recent audited tentative or final cost report completed prior to fiscal year 2009.

Finally, this new rule clarifies that direct graduate medical education (DGME) expenses are not considered costs associated with inpatient hospital services and are not settled to cost. Instead, state-owned teaching hospitals will be reimbursed a pro rata share of their annual allowable DGME costs based on the availability of funds appropriated for DGME.

#### Section-by-Section Summary

Proposed subsection (a) states that effective September 1, 2008, state-owned teaching hospitals will be reimbursed based on TEFRA cost reimbursement methods and procedures.

Proposed subsection (b) clarifies that DGME will not be included in inpatient hospital service cost reimbursement and will be reimbursed based on available funds appropriated for DGME.

Proposed subsections (c) - (d) outline how inpatient hospital services will be cost reimbursed based on interim payments derived from the Medicaid hospital cost report. The interim payments will be subject to settlement at both tentative and final audit of a hospital's cost report.

Proposed subsection (e) explains that cost settlements associated with cost reports will be limited by TEFRA target caps, and that the caps will be reset at least every three years with a cost of living increase based on the CMS Prospective Payment System Hospital Market Basket Index applied in years in which the target caps are not reset.

#### Fiscal Note

Thomas M. Suehs, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the proposed rule is in effect there will be no fiscal impact to state government as a result of changing the state-owned teaching hospital reimbursement methodology. This will be an increase in HHSC Medicaid state funds appropriation expenditures of approximately \$5.8 million. The amount of additional state match required to increase payments to the state teaching hospitals as

a result of this proposed rule is offset by the decreased amount of state match that would no longer be required to fund their UPL supplemental payments from the federal government. The proposed rule will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

#### Small and Micro-business Impact Analysis

Mr. Suehs has also determined that there will be no effect on small businesses or micro businesses to comply with the proposal, as they will not be required to alter their business practices as a result of the rule. There are no anticipated economic costs to persons who are required to comply with the proposed rule. There is no anticipated negative impact on local employment.

#### Public Benefit

Carolyn Pratt, Director of Rate Analysis, has determined that for each year of the first five years the proposed rule is in effect, the anticipated public benefit of this new rule is that the state will reimburse state-owned teaching hospitals based on TEFRA reimbursement principles, so their allowable Medicaid inpatient costs will be fully reimbursed.

#### Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

#### Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

#### Public Comment

Written comments on the proposal may be submitted to Chris Dockal, Senior Rate Analyst in the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, MC-H400, Austin, Texas 78708-5200; by fax (512) 491-1983 or by e-mail at Chris.Dockal@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

#### Statutory Authority

The new rule is proposed under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The proposed new rule affects the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§355.8056. State-Owned Teaching Hospital Reimbursement Methodology.

(a) For cost reporting periods beginning on or after September 1, 2008, HHSC or its designee reimburses state-owned teaching hos-

pitals under methods and procedures described in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA).

(b) For dates of admission on or after September 1, 2003, state-owned teaching hospitals with allowable Direct Graduate Medical Education (DGME) costs will receive a pro rata share of their annual DGME cost based on availability of appropriated funds. DGME expenses are not considered costs associated with inpatient hospital services and are not settled to cost.

(c) Interim payments are determined by multiplying a hospital's charges allowed under Medicaid by the interim rate effective on the date of admission derived from the hospital's most recent Medicaid cost report settlement, whether tentative or final.

(d) The amount and frequency of interim payments will be subject to the availability of funds appropriated for that purpose. Interim payments are subject to settlement at both tentative and final audit of a hospital's cost report.

(e) Cost Settlement.

(1) The cost settlement process is limited by the TEFRA target cap set pursuant to the Social Security Act §1886(b) (42 U.S.C. §1395ww(b)).

(2) Notwithstanding the process in paragraph (1) of this subsection, HHSC or its designee uses each hospital's final audited cost report, which covers a fiscal year ending during a base year period, for calculating the TEFRA target cap for a hospital.

(3) HHSC or its designee selects a new base year period for calculating the TEFRA target cap at least every three years.

(4) HHSC or its designee increases a hospital's TEFRA target cap in years in which the target cap is not reset under this paragraph, by multiplying the target cap by the CMS Prospective Payment System Hospital Market Basket Index adjusted to the hospital's fiscal year.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 19, 2008.

TRD-200802597

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: June 29, 2008

For further information, please call: (512) 424-6900



## 1 TAC §355.8061

The Texas Health and Human Services Commission (HHSC) proposes an amendment to §355.8061, concerning Payment for Hospital Services. The amendment references three new rules being proposed concurrently in this issue of the *Texas Register*.

### Background and Justification

This proposed amendment is part of a larger revision to Medicaid inpatient hospital reimbursement rules. Elsewhere in this issue of the *Texas Register*, HHSC contemporaneously proposes new §§355.8052, 355.8054, and 355.8056 and an amendment to §355.8063.

The proposed amendment to §355.8061 adds references to §355.8052, Inpatient Hospital Reimbursement Methodology; §355.8054, Children's Hospital Reimbursement Methodology;

and §355.8056, State-Owned Teaching Hospital Reimbursement Methodology. The new references in §355.8061 reflect a concurrent rewrite of §355.8063, Reimbursement Methodology for Inpatient Hospital Services.

Concurrently with this amendment, HHSC is proposing three new rules to govern Medicaid inpatient hospital reimbursement: §355.8052, Inpatient Hospital Reimbursement Methodology; §355.8054, Children's Hospital Reimbursement Methodology; and §355.8056, State-Owned Teaching Hospital Reimbursement Methodology.

The reimbursement methodology for inpatient hospital reimbursement (other than children's and state-owned teaching hospitals), previously in §355.8063 subsections (a) - (n) and (p) - (q), will be in proposed new §355.8052. The reimbursement methodology for children's hospitals, previously in §355.8063 subsections (o) and (r), will be in proposed new §355.8054. The reimbursement methodology for state-owned teaching hospitals, previously covered in §355.8063, will be in proposed new §355.8056.

The new rules will supersede §355.8063 for claims approved for payment for admissions in state fiscal year 2009. The requirements in §355.8063 will continue to apply to claims approved for payment through state fiscal year 2008.

### Section-by-Section Summary

Proposed §355.8061(a)(1) is being revised to include citations to new rules proposed in §355.8052, Inpatient Hospital Reimbursement Methodology, §355.8054, Children's Hospital Reimbursement Methodology, and §355.8056, State-Owned Teaching Hospital Reimbursement Methodology.

### Fiscal Note

Thomas M. Suehs, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the proposed amendment is in effect there will not be a fiscal impact to state government as a result of the amendment proposed to §355.8061. The proposed amendment will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

### Small and Micro-business Impact Analysis

Mr. Suehs has also determined that there will be no effect on small businesses or micro businesses to comply with the proposal, as they will not be required to alter their business practices as a result of the amendment. There are no anticipated economic costs to persons who are required to comply with the proposed amendment. There is no anticipated negative impact on local employment.

### Public Benefit

Carolyn Pratt, Director of Rate Analysis, has determined that for each year of the first five years the proposed amendment is in effect, the public will benefit from the adoption of the amendment by the addition of a clear reference to new rules related to this rule.

### Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the

economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

#### Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

#### Public Comment

Written comments on the proposal may be submitted to Chris Dockal, Senior Rate Analyst in the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, MC-H400, Austin, Texas 78708-5200; by fax (512) 491-1983 or by e-mail at Chris.Dockal@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

#### Statutory Authority

The amendment is proposed under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The proposed amendment affects the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

#### §355.8061. *Payment for Hospital Services.*

(a) The Health and Human Services Commission (commission) or its designated agent shall reimburse hospitals approved for participation in the Texas Medical Assistance Program for covered Title XIX hospital services provided to eligible Medicaid recipients. The Texas Title XIX State Plan for Medical Assistance provides for reimbursement of covered hospital services to be determined as specified in paragraphs (1) - (4) of this subsection.

(1) The amount payable for inpatient hospital services shall be determined as specified in §355.8052 of this title (relating to Inpatient Hospital Reimbursement Methodology); §355.8054 of this title (relating to Children's Hospital Reimbursement Methodology); §355.8056 of this title (relating to State-Owned Teaching Hospital Reimbursement Methodology) and §355.8063 of this title (relating to Reimbursement Methodology for Inpatient Hospital Services).

(2) - (5) (No change.)

(b) - (d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 19, 2008.

TRD-200802598

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: June 29, 2008

For further information, please call: (512) 424-6900



#### 1 TAC §355.8063

The Texas Health and Human Services Commission (HHSC) proposes an amendment to §355.8063, concerning Reimbursement Methodology for Inpatient Hospital Services. This proposal deletes subsection (u) to discontinue high volume payments made annually to eligible hospitals participating in the Medicaid Disproportionate Share Hospital (DSH) program.

#### Background and Justification

This proposed amendment is part of a larger revision to Medicaid inpatient hospital reimbursement rules. Elsewhere in this issue of the *Texas Register*, HHSC contemporaneously proposes new §§355.8052, 355.8054, and 355.8056 and amendments to §355.8061.

This proposed amendment, along with a future amendment to §355.8065(f)(2)(D), discontinues Medicaid high volume payments and restores Disproportionate Share Hospital (DSH) funds to approximately 60 private urban hospitals.

Prior to state fiscal year 2003, qualifying private urban hospitals received a portion of available Medicaid DSH funds to offset their Medicaid shortfall and uncompensated care costs. In response to a cost containment provision in the 2002-2003 General Appropriations Act (Article II, Special Provisions, Section 33, 77th Legislature, Regular Session, 2001), the DSH payments to these hospitals were reduced. At the same time, HHSC instituted a high volume payment program for these same hospitals.

Currently, five public urban hospitals receive approximately \$26,400,000 additional DSH funds as a result of the cost containment adjustments made in the DSH program in 2003. These five public urban hospitals are required to transfer the exact amount of additional DSH funds they receive as a result of the cost containment adjustment to HHSC through an intergovernmental transfer (IGT). HHSC then uses these funds as the state share for the high volume payments referenced in this rule (approximately \$10 million) as well as to offset appropriation cuts made by the 77th Legislature (approximately \$16 million).

This proposed amendment deleting 1 TAC §355.8063(u) removes the high volume payments currently being made annually to the DSH qualified private urban hospitals. The future amendment to §355.8065(f)(2)(D) removes the DSH conversion factor language that directs the approximately \$26,400,000 to the five public urban hospitals. This removal of the conversion factor will result in \$26,400,000 of DSH funds being allocated to the approximately 60 private urban hospitals that were the recipients of the high volume payments being deleted by this amendment. Therefore, these private hospitals will not be impacted in their total Medicaid reimbursement as a result of these rule changes.

The deletion of the high volume payments will result in a loss of approximately \$16 million in IGT funds transferred from hospitals to the state general revenue that were used to offset appropriation cuts made by the 77th Legislature. This is the net effect on revenues to all parties of the deletion of the cost containment language in a future amendment to the DSH rule, §355.8065(f)(2)(D), and the deletion of the high volume payment language in §355.8063(u).

Concurrent with this amendment, HHSC is proposing three new rules to govern Medicaid inpatient hospital reimbursement: §355.8052, Inpatient Hospital Reimbursement Methodology; §355.8054, Children's Hospital Reimbursement Methodology; and §355.8056, State-Owned Teaching Hospital Reimbursement Methodology. These new rules will supersede portions of §355.8063 for claims approved for payment for admissions be-

ginning in state fiscal year 2009. The requirements in §355.8063 will continue to apply to claims approved for payment through state fiscal year 2008.

#### Section-by-Section Summary

The proposed amendment deletes §355.8063(u) to discontinue high-volume payments made annually to eligible hospitals participating in the Medicaid DSH program.

#### Fiscal Note

Thomas M. Suehs, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the proposed amendment is in effect there will be a negative fiscal impact to state government of (\$15,972,000) for state fiscal year (SFY) 2009; (\$15,692,160) for SFY 2010; (\$15,467,760) for SFY 2011; (\$15,467,760) for SFY 2012; and (\$15,467,760) for SFY 2013, as a result of discontinuing the inpatient hospital high volume payments and the loss of the IGT funds used to offset Section 33. This fiscal impact is the result of a loss of IGT funds to the state general revenue. The proposed amendment will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

#### Small and Micro-business Impact Analysis

Mr. Suehs has also determined that there will be no effect on small businesses or micro businesses to comply with the proposal, as they will not be required to alter their business practices as a result of the amended rule. There are no anticipated economic costs to persons who are required to comply with the proposed amendment. There is no anticipated negative impact on local employment.

#### Public Benefit

Carolyn Pratt, Director of Rate Analysis, has determined that for each year of the first five years the proposed amendment is in effect, the public will benefit from the adoption of the amendment. The anticipated public benefit, as a result of enforcing the amendment in conjunction with the future amendment to 1 TAC §355.8065(f)(2)(D), will be to provide for a simpler payment methodology for all providers.

#### Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

#### Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

#### Public Comment

Written comments on the proposal may be submitted to Chris Dockal, Senior Rate Analyst in the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box

85200, MC-H400, Austin, Texas 78708-5200; by fax (512) 491-1983 or by e-mail at Chris.Dockal@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

#### Statutory Authority

The amendment is proposed under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The proposed amendment affects the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

*§355.8063. Reimbursement Methodology for Inpatient Hospital Services.*

(a) - (t) (No change.)

~~[(u) High-volume payments recognize the higher medical assistance costs and indigent care cost of hospitals that treat higher levels of low-income and indigent patients. Eligible hospitals are defined as non-state owned or operated, non-public, hospitals located in urban counties with Medicaid days greater than 160% of the mean Medicaid days. High-volume payments not exceeding \$26,400,000 shall be allocated in proportion to uncompensated care loss for eligible hospitals participating in the current year DSH program. Payments under this provision will be made annually based on current year finalized Medicaid DSH claims data. The state shall adjust the high volume payments in accordance with applicable Medicaid charge upper limit regulations. Any adjustment shall be made on a proportional basis in order to allow eligible hospitals to participate to the fullest extent possible within the limits on disproportionate share hospital payments. HHSC shall use current year DSH data to determine Medicaid days. County population will be based on the 2000 United States census.]~~

~~[(u) [(+)] State Owned Hospital Supplemental Inpatient Payments. Notwithstanding other provisions of this attachment, supplemental payments will be made each state fiscal year in accordance with this subsection to state government-owned or operated hospitals for inpatient services provided to Medicaid patients.~~

~~(1) Supplemental payments are available under this subsection for inpatient hospital services provided by state government-owned or operated hospitals on or after December 13, 2003. To qualify for a supplemental payment, the hospital must be owned or operated by the state of Texas.~~

~~(2) The aggregate supplemental payment amount will be the annual difference between the aggregate upper payment limit and the inpatient fee-for-service Medicaid payments made to the state government-owned or operated hospitals under this attachment. The aggregate upper payment limit will be calculated, based on Medicare payment principles and in accordance with the federal upper limit regulations at 42 CFR §447.272, using the most recent cost report data available.~~

~~(3) The amount of the supplemental payment made to each state government-owned or operated hospital will be determined by:~~

~~(A) dividing each hospital's fee-for-service Medicaid payments by the sum of the Medicaid fee-for-service payments of all state government-owned or operated hospitals;~~

~~(B) multiplying the percentage calculated in subparagraph (A) of this paragraph by the aggregate supplemental payment calculated in paragraph (2) of this subsection.~~



(4) Supplemental payments determined under this subsection will be calculated annually and paid quarterly.

(5) Supplemental payments made under this subsection when combined with other inpatient payments made under this section shall not exceed the maximum amounts allowable under applicable federal regulations at 42 CFR §447.271.

(v) ~~[(w)]~~ Reimbursement to freestanding psychiatric facilities. Effective January 1, 2008, HHSC or its designee reimburses freestanding psychiatric facilities under the prospective payment system, a hospital-specific per diem rate. The per diem rate will be determined based upon the Medicare federal base per diem for inpatient psychiatric facilities with facility-based adjustments for wages, rural location, and length of stay as determined by Medicare, to the extent possible within available funds. HHSC or its designee will not cost settle for services provided to recipients admitted as inpatients to freestanding psychiatric facilities reimbursed under the prospective payment system. The freestanding psychiatric inpatient per diem rates are for Medicaid clients under 21 years of age. Per diem rates will be increased only if the Texas Legislature appropriates funds for this specific purpose.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 19, 2008.

TRD-200802599

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: June 29, 2008

For further information, please call: (512) 424-6900



## TITLE 4. AGRICULTURE

### PART 1. TEXAS DEPARTMENT OF AGRICULTURE

#### CHAPTER 3. BOLL WEEVIL ERADICATION PROGRAM

The Texas Department of Agriculture (the department) proposes amendments to Chapter 3, Subchapter B, §3.20 and the repeal of §3.21, concerning the department's Boll Weevil Eradication Program. The proposed amendments to §3.20 are made to update language in the section relating to the enabling legislation and authority of the Texas Boll Weevil Eradication Foundation (Foundation) to adopt rules. The repeal of §3.21, relating to rule consistency and approval, is proposed to repeal an outdated section. The Foundation is no longer authorized to adopt rules, which makes this section unnecessary.

Brian Murray, assistant commissioner for external relations, has determined that for the first five years the amended and repealed sections are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amended and repealed sections.

Mr. Murray also has determined that for each year of the first five years the amended and repealed sections are in effect the public benefit anticipated as a result of enforcing the sections will be having updated rules relating to the department's boll weevil eradication program. There will be no economic cost for micro-

businesses, small businesses or individuals who are required to comply with the amended and repealed sections, as proposed.

Comments on the proposal may be submitted to Brian Murray, Assistant Commissioner for External Relations, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

#### SUBCHAPTER B. ESTABLISHMENT OF RULES, PROCEDURES, AND METHODS OF TREATMENT

##### 4 TAC §3.20

The amendments to §3.20 are proposed under the Texas Agriculture Code, §74.120 which authorizes the department to adopt reasonable rules necessary to carry out the purposes of Chapter 74, Subchapter D, relating to the boll weevil eradication foundation program.

The code affected by the proposal is the Texas Agriculture Code, Chapter 74.

##### §3.20. *Statement of Purpose and Role of the Department.*

(a) It has been declared by the Texas Legislature [~~in Senate Bill 30, 73rd Legislative Session, 1993,~~] that the boll weevil presents a major economic threat to Texas' cotton crop and that it is necessary to create a Boll Weevil Eradication Foundation as a vehicle to provide for assessments of cotton producers, governing boards, and for establishing eradication zones in order to suppress and eradicate the boll weevil. It is also the intent of the Legislature that any program established for boll weevil eradication be carried out in a manner which incorporates the best available integrated pest management techniques, as well as other methods of eradication, and is implemented in a manner that poses the least possible risk to people, property, and the environment.

~~[(b) The Texas Department of Agriculture (the department), through the authority vested in the commissioner of agriculture (the commissioner), has been designated as the state agency responsible for general oversight of the implementation of Senate Bill 30 (enacted as the Texas Agriculture Code, Chapter 74, Subchapter B), including certifying the organization which will create the foundation, adopting guidelines and other rules for implementation of the boll weevil eradication program, enforcing the provisions of Senate Bill 30 and any rules adopted thereunder, and approving programs or projects disbursement of funds by the foundation.]~~

(b) ~~[(e)]~~ In accordance with the Texas Agriculture Code (the Code), Chapter 74, Subchapter D, §74.120, the commissioner is specifically charged with adopting rules to protect individuals, livestock, wildlife, and honeybee colonies on any premises located in an eradication zone on which cotton plants are being grown that have been or are being treated as part of the boll weevil eradication program. ~~[In addition, the commissioner is charged with adopting rules establishing criteria by which the Boll Weevil Eradication Foundation (the foundation) develops its own rules, procedures, and methods of treatment. This subchapter is intended to meet the requirements of the Code, §74.120.]~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 19, 2008.

TRD-200802601

Dolores Alvarado Hibbs  
General Counsel  
Texas Department of Agriculture  
Earliest possible date of adoption: June 29, 2008  
For further information, please call: (512) 463-4075



## SUBCHAPTER B. ESTABLISHMENT OF FOUNDATION RULES, PROCEDURES, AND METHODS OF TREATMENT

### 4 TAC §3.21

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Agriculture or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal of §3.21 is proposed under the Texas Agriculture Code, §74.120 which authorizes the department to adopt reasonable rules necessary to carry out the purposes of Chapter 74, Subchapter D, relating to the boll weevil eradication foundation program.

The code affected by the proposal is the Texas Agriculture Code, Chapter 74.

#### §3.21. Rule Consistency and Approval.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 19, 2008.

TRD-200802600

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: June 29, 2008

For further information, please call: (512) 463-4075



## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 61. SCHOOL DISTRICTS

#### SUBCHAPTER BB. COMMISSIONER'S RULES ON REPORTING REQUIREMENTS

### 19 TAC §61.1028

The Texas Education Agency (TEA) proposes new §61.1028, concerning reporting of bus accidents. The proposed new rule would implement the requirements of the Texas Education Code (TEC), §34.015, as added by House Bill (HB) 323, 80th Texas Legislature, 2007, that charge the TEA with collecting from school districts annually information on accidents involving the districts' buses and reporting this information.

Proposed new 19 TAC §61.1028, Reporting of Bus Accidents, would implement the TEC, §34.015, by establishing applicable definitions and specific requirements for reporting bus accidents. School districts and open-enrollment charter schools would be required to report to the TEA annually the number of bus acci-

dents. Each bus accident report must include the date of the accident; the type of bus involved; whether the bus was equipped with seat belts and, if so, what kind; the number of students and adults involved in the accident; the number and types of injuries sustained by the bus passengers; and whether injured passengers were wearing seat belts and, if so, what kind.

The proposed new rule would require school districts and open-enrollment charter schools to report information on bus accidents to the TEA annually via an online bus accident reporting system. The requirement to report bus accident information may necessitate the keeping of local records or logs of these accidents.

Adam Jones, deputy commissioner for finance and administration, has determined that for the first five-year period the new section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the new section.

Mr. Jones has determined that for each year of the first five years the new section is in effect the public benefit anticipated as a result of enforcing the new section will be to make available to the public on the TEA website information on accidents involving school district and open-enrollment charter school buses. There is no anticipated economic cost to persons who are required to comply with the proposed new section.

There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal begins May 30, 2008, and ends June 30, 2008. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [rules@tea.state.tx.us](mailto:rules@tea.state.tx.us) or faxed to (512) 463-0028. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register* on May 30, 2008.

The new section is proposed under the Texas Education Code, §34.015, which authorizes the TEA by rule to determine the information to be reported for bus accidents. The TEC, §34.015, requires school districts to report annually to the TEA information regarding accidents involving the districts' buses and requires the TEA to publish reported information on its website.

The new section implements the Texas Education Code, §34.015.

#### §61.1028. Reporting of Bus Accidents.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Accident--Any accident as described by the Texas Transportation Code, Chapter 550, Subchapter B.

(2) School bus--A school bus is a motor vehicle that was manufactured in compliance with the Federal Motor Vehicle Safety Standards (FMVSS) for school buses in effect on the date of manufacture and that is used to transport preprimary, primary, or secondary students on a route to or from school or on a school-related activity trip other than on routes to and from school. A school bus is a bus owned, leased, contracted to, or operated by a school or school district that is

regularly used to transport students to and from school or school-related activities; meets all applicable FMVSS; and is readily identified by alternately flashing lights, national school bus yellow paint, and the legend "School Bus." The term does not include a multifunction school activity bus, a school activity bus, or a motor bus.

(3) Multifunction school activity bus--A multifunction school activity bus is a subcategory of school bus. It must meet all FMVSS for a school bus except having traffic control devices, including flashing lights and stop arm, and it may not be painted in national school bus yellow. The multifunction school activity bus cannot be used to transport students from home to school or school to home or for any purpose other than school activities.

(4) School activity bus--A school activity bus is a bus designed to accommodate more than 15 passengers, including the operator, that is owned, operated, rented, or leased by a school district, county school, open-enrollment charter school, regional education service center, or shared services arrangement and that is used to transport public school students on a school-related activity trip, other than on routes to and from school. The term does not include a chartered bus, a bus operated by a mass transit authority, a school bus, or a multifunction school activity bus.

(5) Motor bus--The term "motor bus" does not include a vehicle that meets the definition of a school bus, a multifunction school activity bus, or a school activity bus. A motor bus is:

(A) a commercial, motor transit-type vehicle owned or leased by the school district or the school district's commercial contractor that is designed to transport 16 or more passengers including the driver on school activity trips; or

(B) a transit-type bus operated by a mass/metropolitan transit authority when the school district contracts with the authority in accordance with Texas Education Code, §34.008, to transport students to and from school.

(b) Reporting.

(1) School districts and open-enrollment charter schools shall report annually to the Texas Education Agency (TEA) the number of accidents in which their buses were involved in the past year. School districts and open-enrollment charter schools shall report the accidents in a manner prescribed by the commissioner of education. School districts and open-enrollment charter schools shall file annual accident reports to the TEA only in the period beginning July 1 and ending July 31 and shall include the following information in the report:

(A) the total number of bus accidents;

(B) the date each accident occurred;

(C) the type of bus involved in each accident;

(D) whether the bus involved in each accident was equipped with seat belts and, if so, the type of seat belts;

(E) the number of students and adults involved in each accident;

(F) the number and types of injuries that were sustained by the bus passengers in each accident; and

(G) whether the injured passengers in each accident were wearing seat belts at the time of the accident and, if so, the type of seat belts.

(2) A school district or open-enrollment charter school shall report a bus accident involving a school bus, a multifunction school activity bus, a school activity bus, or a motor bus if:

(A) the bus is owned, leased, contracted, or chartered by a school district or charter school and was transporting school district or charter school personnel, students, or a combination of personnel and students; or

(B) the bus was driven by a school district or charter school employee or by an employee of the school district's or charter school's bus contractor with no passengers on board and the accident involved a collision with a pedestrian.

(3) A school district or open-enrollment charter school shall not report a bus accident involving a school bus, a multifunction school activity bus, a school activity bus, or a motor bus if:

(A) the bus was driven by a school district or charter school employee or by an employee of the school district's or charter school's bus contractor, the accident occurred when no passenger other than the school district's or charter school's driver or bus contractor's driver was on board the bus, and the accident did not involve a collision with a pedestrian; or

(B) the accident involved a bus chartered by a school district or charter school for a school activity trip and no school district or charter school personnel or students were on board the bus at the time of the accident.

(4) A school district or open-enrollment charter school shall not report an accident that occurred in a vehicle that is owned, contracted, or chartered by a school district or charter school and is not a school bus, a multifunction school activity bus, a school activity bus, or a motor bus.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 19, 2008.

TRD-200802587

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: June 29, 2008

For further information, please call: (512) 475-1497



## CHAPTER 97. PLANNING AND ACCOUNTABILITY

### SUBCHAPTER AA. ACCOUNTABILITY AND PERFORMANCE MONITORING

#### 19 TAC §97.1001

*(Editor's note: In accordance with Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 19 TAC §97.1001 is not included in the print version of the Texas Register. The figure is available in the on-line version of the May 30, 2008, issue of the Texas Register.)*

The Texas Education Agency (TEA) proposes an amendment to §97.1001, concerning accountability. The section describes the state accountability rating system and annually adopts the most current accountability manual. The proposed amendment would adopt applicable excerpts of the *2008 Accountability Manual*. Earlier versions of the manual will remain in effect with respect to the school years for which they were developed.

Legal counsel with the TEA has recommended that the procedures for issuing accountability ratings for public school districts and campuses be adopted as part of the *Texas Administrative Code*. This decision was made in 2000 given a court decision challenging state agency decision making via administrative letter/publications. Given the statewide application of the accountability rating process and the existence of sufficient statutory authority for the commissioner of education to formally adopt rules in this area, portions of each annual accountability manual have been adopted since 2000. The accountability system evolves from year to year so the criteria and standards for rating and acknowledging schools in the most current year differ to some degree over those applied in the prior year. The intention is to annually update 19 TAC §97.1001 to refer to the most recently published accountability manual.

The proposed amendment to 19 TAC §97.1001 would adopt excerpts of the *2008 Accountability Manual* into rule as a figure. The excerpts, *Chapters 2-6, 8, 10-13, and 15-17* of the *2008 Accountability Manual*, specify the indicators, standards, and procedures used by the commissioner of education to determine accountability ratings, both standard and alternative education accountability (AEA), for districts, campuses, and charter schools. These chapters also specify indicators, standards, and procedures used to determine Gold Performance Acknowledgment (GPA) on additional indicators for Texas public school districts and campuses. The TEA will issue accountability ratings under the procedures specified in the *2008 Accountability Manual* by August 1, 2008. Ratings may be revised as a result of investigative activities by the commissioner as authorized under Texas Education Code, §39.074 and §39.075.

In 2008, campuses and districts will be evaluated using three base indicators: Texas Assessment of Knowledge and Skills (TAKS) results, completion rates, and annual dropout rates. In 2008, the GPA system will award acknowledgment on up to 14 separate indicators to districts and campuses rated *Academically Acceptable*, *AEA Academically Acceptable*, or higher: Attendance Rate for Grades 1-12; Advanced Course/Dual Enrollment Completion; Advanced Placement/International Baccalaureate Results; College Admissions Test Results; Commended Performance on Reading/English Language Arts (ELA), Mathematics, Writing, Science and/or Social Studies; Recommended High School Program/Distinguished Achievement Program Participation; Comparable Improvement on Reading/ELA and Mathematics; and Texas Success Initiative - Higher Education Readiness Component on ELA and/or Mathematics.

The proposed amendment would also modify subsection (e) to specify that accountability manuals adopted for school years prior to 2008-2009 will remain in effect with respect to those school years.

Criss Cloudt, associate commissioner for assessment, accountability, and data quality, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Dr. Cloudt has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be to continue to inform the public of the existence of annual manuals specifying rating procedures for the public schools by including this rule in the *Texas Administrative Code*. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal begins May 30, 2008, and ends June 30, 2008. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [rules@tea.state.tx.us](mailto:rules@tea.state.tx.us) or faxed to (512) 463-0028. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register* on May 30, 2008.

The amendment is proposed under the Texas Education Code, §§39.051(c)-(d), 39.072(c), 39.0721, 39.073, and 29.081(e), which authorize the commissioner of education to specify the indicators, standards, and procedures used to determine standard accountability ratings and alternative education accountability ratings, and to determine acknowledgment on additional indicators.

The amendment implements the Texas Education Code, §§39.051(c)-(d), 39.072(c), 39.0721, 39.073, and 29.081(e).

*§97.1001. Accountability Rating System.*

(a) The rating standards established by the commissioner of education under Texas Education Code (TEC), §39.051(c) and (d), shall be used to evaluate the performance of districts, campuses, and charter schools. The indicators, standards, and procedures used to determine ratings under both standard and alternative education accountability (AEA) procedures will be annually published in official Texas Education Agency publications. These publications will be widely disseminated and cover the following procedures:

- (1) indicators, standards, and procedures used to determine district ratings;
- (2) indicators, standards, and procedures used to determine campus ratings;
- (3) indicators, standards, and procedures used to determine acknowledgment on Additional Indicators; and
- (4) procedures for submitting a rating appeal.

(b) The standard and alternative procedures by which districts, campuses, and charter schools are rated and acknowledged for 2008 [2007] are based upon specific criteria and calculations, which are described in excerpted sections of the 2008 [2007] *Accountability Manual* [dated May 2007-] provided in this subsection.

Figure: 19 TAC §97.1001(b)  
[Figure: 19 TAC §97.1001(b)]

(c) Ratings may be revised as a result of investigative activities by the commissioner as authorized under TEC, §39.074 and §39.075.

(d) The specific criteria and calculations used in the accountability manual are established annually by the commissioner of education and communicated to all school districts and charter schools.

(e) The specific criteria and calculations used in the annual accountability manual adopted for school years prior to 2008-2009 [2007-2008] remain in effect for all purposes, including accountability, data standards, and audits, with respect to those school years.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 19, 2008.

TRD-200802588

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: June 29, 2008

For further information, please call: (512) 475-1497



## **TITLE 22. EXAMINING BOARDS**

### **PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS**

#### **CHAPTER 469. COMPLAINTS AND ENFORCEMENT**

##### **22 TAC §469.1**

The Texas State Board of Examiners of Psychologists proposes amendments to §469.1, Timeliness of Complaints. The amendments are being proposed to make grammatical corrections to the rule.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, Texas 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

##### *§469.1. Timeliness of Complaints.*

A complaint is timely filed if it is received by the Board, in proper form, within five years of the date of the termination of professional services. A complaint alleging sexual misconduct[-] by a licensee is timely filed if received within ten years of the termination of services or the patient's reaching the age of majority.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 16, 2008.

TRD-200802544

Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: June 29, 2008

For further information, please call: (512) 305-7706



##### **22 TAC §469.2**

The Texas State Board of Examiners of Psychologists proposes amendments to §469.2, Public Complaint Notification Statement. The amendments are being proposed to make grammatical corrections to the rule.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, Texas 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

##### *§469.2. Public Complaint Notification Statement.*

(a) Methods of Notification. The Board and its licensees shall provide notification to the public that complaints can be filed with the Board by publishing the Board's name, its mailing address, and telephone number by the following method:

(1) Displaying a sign in a prominent location[-] on a wall in all rooms where psychological services are conducted in a position that is reasonably likely to be viewed by individuals occupying the room, on paper of no less than 8-1/2 inches by 11 inches in size, with the Board-approved notification statement printed in black. Licensees providing psychological services through the internet shall display an image of the notification statement in a prominent and easily accessible location within the website. The Board approved notification statement must be printed in both English and Spanish.

(A) The Board-approved English notification statement reads as follows: "Be it known that the Texas State Board of Examiners of Psychologists receives questions and complaints regarding the practice of psychology. For assistance please contact: Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, Texas 78701, (512) 305-7700, or 800-821-3205."

(B) The Board-approved Spanish notification statement reads as follows: "Se desea informar que la Comisión Estatal Examinadora de Psicólogos de Texas recibe toda clase de consultas y quejas sobre el ejercicio profesional de la psicología en el Estado de Texas. Si usted necesita este servicio, comuníquese con: Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, Texas 78701, (512) 305-7700 o 800-821-3205."

(2) The Board-approved notification statement is provided to licensees at the time of licensure. Additional Board-approved notification statements may be obtained directly from the Board [~~Board's~~] office at any time.

(b) In addition to the Board-approved notification sign, licensees may also notify consumers by the following methods:

(1) on each registration form, application, or written contract for services of a licensee; or

(2) in a bill for services provided by a licensee.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 16, 2008.

TRD-200802545

Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: June 29, 2008

For further information, please call: (512) 305-7706



## 22 TAC §469.3

The Texas State Board of Examiners of Psychologists proposes amendments to §469.3, Standardized Complaint Form. The amendments are being proposed to make grammatical corrections to the rule.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, Texas 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

### §469.3. Standardized Complaint Form.

(a) All complaints filed against a licensee must be submitted to the Board on the Board approved standardized complaint form. The Board-approved complaint form can be obtained free of charge from the Board's office or downloaded from the Board's web site.

(b) The Board shall make available to each person who wishes to file a complaint: the Board-approved complaint form, waiver form if appropriate, release of information forms, and the Rules and Regulations of the Board.

(c) The complaint form must be physically delivered to the Board office, mailed to the Board office [~~Board's offices;~~] or faxed to the Board.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 16, 2008.

TRD-200802546

Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

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For further information, please call: (512) 305-7706



## 22 TAC §469.4

The Texas State Board of Examiners of Psychologists proposes amendments to §469.4, Complaint Investigation. The amendments are being proposed to make grammatical corrections to the rule.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, Texas 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

### §469.4. Complaint Investigation.

(a) The Board has established a priority rating system to distinguish between categories of complaints. The priority rating system is as follows:

(1) - (2) (No change.)

(3) cases involving current applicants for licensure; and

(4) cases involving other administrative violations of Board Rules or the Act. [5]

~~[(5) cases involving covert or other undercover investigations in conjunction with any of the above priorities.]~~

(b) - (d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 16, 2008.

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Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

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For further information, please call: (512) 305-7706



## 22 TAC §469.5

The Texas State Board of Examiners of Psychologists proposes amendments to §469.5, Complaint Disposition. The amendments are being proposed to clarify notice to a licensee of a pending complaint.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, Texas 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other codes, articles or statutes are affected by this section.

### §469.5. *Complaint Disposition.*

(a) - (d) (No change.)

(e) Licensees will receive notice in writing and addressed to the party. Notice to a licensee is effective and service is complete when sent by certified or registered mail, return receipt requested, to the licensee's address of record at the time of the mailing.

(f) [(e)] Following completion of the investigation, an investigation report shall be drafted. This report shall include a recommendation as to whether the investigation has produced sufficient evidence to establish probable cause that a violation of the Board's Act and rules has occurred.

(g) [(f)] The Enforcement Division Manager and the counsel for the Board shall review the investigation report, evidence and the case file of the complaint to determine if there is sufficient evidence to demonstrate a violation of the Board's Act, rules, or order to recommend probable cause to the Board.

(h) [(g)] A complaint for which the staff determines probable cause shall be referred to a Disciplinary Review Panel of the Board for an informal conference. The Board shall serve the Respondent with a Notice of Violation and Informal Settlement Conference.

(i) [(h)] A complaint for which the staff determines that probable cause does not exist shall be referred to the Board for dismissal.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 16, 2008.

TRD-200802548

Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: June 29, 2008

For further information, please call: (512) 305-7706



## 22 TAC §469.6

The Texas State Board of Examiners of Psychologists proposes amendments to §469.6, Temporary Suspension of a License. The amendments are being proposed to make grammatical corrections to the rule.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, Texas 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other codes, articles or statutes are affected by this section.

### §469.6. *Temporary Suspension of a License.*

(a) An executive committee of the Board, consisting of the Board Chair[,] and two other Board members, shall temporarily suspend the license of a licensee under the Act if the executive committee determines, based on evidence or information presented to the committee, that the continued practice by the licensee constitutes a continuing or imminent threat to the public welfare.

(b) - (e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 16, 2008.

TRD-200802549

Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: June 29, 2008

For further information, please call: (512) 305-7706

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## 22 TAC §469.8

The Texas State Board of Examiners of Psychologists proposes amendments to §469.8, Rehabilitation Guidelines. The amendments are being proposed to make grammatical corrections to the rule.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, Texas 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other codes, articles or statutes are affected by this section.

### §469.8. *Rehabilitation Guidelines.*

(a) In the event of revocation or suspension of a license due to non-compliance with the rules of the Board and/or its ethical principles, the Board, in its discretion, may implement a plan of rehabilitation. The plan shall outline the steps the person must follow in order to be considered for relicensure or removal of suspension. Completion of the plan may lead to consideration of submission of an application for relicensure; removal of suspension; or removal of supervision requirements. In the event the licensee has not met the Board's criteria for rehabilitation, the plan may be revised, expanded, and/or continued depending upon the progress of the rehabilitation program. The licensee, before beginning the options outlined in subsection (b) of this section, must address any outstanding ~~[or after-acquired]~~ complaints.

(b) The Board may follow one or more options in devising a rehabilitation program:

(1) The individual may be supervised for a specified length of time in all or selected areas of activities related to his/her practice as a licensee by a licensed psychologist approved by the Board ~~[for a specified length of time]~~.

(A) - (D) (No change.)

(2) - (4) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 16, 2008.

TRD-200802550

Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: June 29, 2008

For further information, please call: (512) 305-7706

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## 22 TAC §469.11

The Texas State Board of Examiners of Psychologists proposes amendments to §469.11, Legal Actions Reported. The amendments are being proposed to make grammatical corrections to the rule.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, Texas 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other codes, articles or statutes are affected by this section.

### §469.11. *Legal Actions Reported.*

Any criminal action taken against a licensee including, but not limited to, arrest, indictment, or conviction, must be reported to the Board within thirty days of the activity. Any civil lawsuit pertaining to the practice of psychology or involving a licensee's patient or former patient must be reported to the Board's office by sending a copy of the initial pleadings to the Board within thirty days of the filing of such action with the court. The licensee may be asked to ~~[, if desired,]~~ submit ~~[any]~~ further documentation and/or a written explanation ~~[along with a copy of the pleadings]~~. Any administrative action (complaint, agreed order) initiated against a licensee by another health licensing board in this state or any other jurisdiction must be reported to the Board by sending a copy of the correspondence from the other licensing board within thirty days of its receipt by the licensee.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 16, 2008.

TRD-200802551

Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: June 29, 2008

For further information, please call: (512) 305-7706

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## 22 TAC §469.12

The Texas State Board of Examiners of Psychologists proposes amendments to §469.12, Suspension of License for Failure to Pay Child Support. The amendments are being proposed to make grammatical corrections to the rule.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, Texas 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other codes, articles or statutes are affected by this section.

### *§469.12. Suspension of License for Failure to Pay Child Support.*

(a) On receipt of a final court or attorney general's order suspending a license due to failure to pay child support, the executive director shall immediately determine if the Board has issued a license to the obligor [obligator] named on the order, and, if a license has been issued:

(1) - (3) (No change.)

(b) - (g) (No change.)

(h) The individual must pay a reinstatement fee in an amount equal to the annual renewal fee set out in Board rule §473.3 of this title (relating to Annual Renewal Fees) prior to issuance of the license under subsection (g) of this section.

(i) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 16, 2008.

TRD-200802552

Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: June 29, 2008

For further information, please call: (512) 305-7706



## 22 TAC §469.13

The Texas State Board of Examiners of Psychologists proposes amendments to §469.13, Non-Compliance with Continuing Education Requirements. The amendments are being proposed to clarify the rule.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, Texas 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other codes, articles or statutes are affected by this section.

### *§469.13. Non-Compliance with Continuing Education Requirements.*

(a) The license of any licensee who fails to comply with the Board's mandatory continuing education requirements pursuant to Board rule §461.11 of this title (relating to Continuing Education), is on delinquent status as of the renewal date of the license.

(b) If continuing education compliance is not proved within 45 days after the license renewal date, the licensee shall be subject to a complaint for violation of Board rule §461.11(a) of this title applies.

(c) A person may not engage in the practice of psychology with a delinquent license, as stated in Board rule §461.7(c) of this title (relating to License Statuses).

(d) If the license is not activated within one year of expiration and goes void, a new application must be filed to obtain active licensure, and the continuing education complaint will be reinstated. The complaint must be resolved before a new license will be issued.

(e) Upon notice of continuing education violation, the licensee may:

(1) Submit proof that continuing education was obtained within the year preceding the renewal date plus the 45-day grace period. Upon receipt and approval, the complaint will be dismissed;

(2) For a first violation, submit proof of late compliance and pay an administrative penalty, which is not considered disciplinary action;

(3) Resign the license in lieu of adjudication by requesting an agreed order of resignation; or

(4) Appear before an informal settlement conference to resolve the matter.

(f) Any payment of an administrative penalty to resolve a complaint is in addition to any applicable renewal fee and late renewal fee assessed by the Licensing Division for late license renewal, pursuant to Board rule §473.4 of this title (relating to Late Fees for Renewals (Not Refundable)).

~~((a))~~ An individual who fails to comply with the Board's mandatory continuing education requirements shall be subject to a complaint for non-compliance with the Board's rules. If a complaint is filed against a licensee for non-compliance and the licensee resigns

in lieu of adjudication of the complaint or the license is voided as delinquent and the licensee later applies for licensure, the complaint shall be reinstated; and the application shall be held in abeyance until the complaint is resolved.]

[(b) Any licensee who has failed to submit proof of full compliance with §461.11 of this title (relating to Continuing Education) shall be referred to the Enforcement Division pursuant to a complaint for non-compliance with §461.15 of this title (relating to Compliance with Act, Rules, Board Directives and Orders) on the forty-fifth day after the original renewal date for the license. The filing of a complaint under this provision shall be in addition to any penalties or requirements assessed by the licensing division for renewal.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 16, 2008.

TRD-200802553

Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: June 29, 2008

For further information, please call: (512) 305-7706

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## 22 TAC §469.14

The Texas State Board of Examiners of Psychologists proposes amendments to §469.14, Monitoring of Licensees. The amendments are being proposed to make grammatical corrections to the rule.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, Texas 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other codes, articles or statutes are affected by this section.

§469.14. *Monitoring of Licensees.*

(a) (No change.)

(b) The Compliance Committee is responsible for implementing the Board's preventive approach [of the Board] to enforcement of the Act and the Rules of the Board by identifying and monitoring licensees who represent a risk to the public.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 16, 2008.

TRD-200802554

Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: June 29, 2008

For further information, please call: (512) 305-7706

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## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 13. TEXAS COMMISSION ON FIRE PROTECTION

#### CHAPTER 429. MINIMUM STANDARDS FOR FIRE INSPECTORS

##### SUBCHAPTER A. MINIMUM STANDARDS FOR FIRE INSPECTOR CERTIFICATION BASED ON REQUIREMENTS IN EFFECT PRIOR TO JANUARY 1, 2005

###### 37 TAC §429.3

The Texas Commission on Fire Protection (the Commission) proposes an amendment to Chapter 429, Minimum Standards for Fire Inspectors, Subchapter A, §429.3, Minimum Standards for Basic Fire Inspector Certification. The purpose of this proposed amendment is to delete unnecessary and confusing language concerning the certification of part-time fire inspectors, and to correct grammatical errors.

Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal impact on state or local governments.

Jake Soteriou has also determined that for each year of the first five years the proposed amendment is in effect, an expected public benefit will be clarity for enforcement purposes. There are no additional costs of compliance for small or large businesses or individuals that are required to comply with this proposed amendment.

Comments regarding this proposed amendment may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to info@tcfp.state.tx.us. Comments will be reviewed and discussed at a future Commission meeting.

This amendment is proposed under Texas Government Code, §419.008, which provides the Commission with the authority to propose rules for the administration of its powers and duties.

Cross reference to statute: Texas Government Code, §419.028.

§429.3. *Minimum Standards for Basic Fire Inspector Certification.*

~~[(a)]~~ In order to be certified by the Commission ~~[commission]~~ as a Basic Fire Inspector, an individual must complete a Commission-approved [commission approved] Basic Fire Inspector Curriculum dated prior to January 1, 2005, and successfully pass the Commission [commission] examination as specified in Chapter 439 of this title (relating to Examinations for Certification).

~~[(b)] A person who holds or is eligible to hold a certificate upon employment as a part-time fire inspector may be certified as a fire inspector, of the same level of certification, without meeting the applicable examination requirements.]~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 19, 2008.

TRD-200802606

Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

Earliest possible date of adoption: June 29, 2008

For further information, please call: (512) 936-3838



## SUBCHAPTER B. MINIMUM STANDARDS FOR FIRE INSPECTOR CERTIFICATION

### 37 TAC §429.203

The Texas Commission on Fire Protection (the Commission) proposes an amendment to Chapter 429, Minimum Standards for Fire Inspectors, Subchapter B, §429.203, Minimum Standards for Basic Fire Inspector Certification--New Track. The purpose of this proposed amendment is to delete language referring to the Commission as certifying part-time fire inspectors; the Commission does not certify part-time fire inspectors.

Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal impact on state or local governments.

Jake Soteriou has also determined that for each year of the first five years the proposed amendment is in effect, there will be no public benefit anticipated as a result of enforcing the amendment. There are no additional costs of compliance for small or large businesses or individuals that are required to comply with this proposed amendment.

Comments regarding this proposed amendment may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to [info@tcfp.state.tx.us](mailto:info@tcfp.state.tx.us). Comments will be reviewed and discussed at a future Commission meeting.

This amendment is proposed under Texas Government Code, §419.008, which provides the Commission with the authority to propose rules for the administration of its powers and duties.

Cross reference to statute: Texas Government Code, §419.028.

§429.203. *Minimum Standards for Basic Fire Inspector Certification--New Track.*

~~[(a)]~~ In order to be certified as a basic fire inspector, an individual must:

(1) possess valid documentation of accreditation from the International Fire Service Accreditation Congress as an Inspector I, Inspector II, and Plans Examiner I; or

(2) complete a Commission-approved Basic Fire Inspector program and successfully pass the Commission examination(s) as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved basic fire inspection training program shall consist of one or any combination of the following:

(A) completion of the Commission-approved Basic Fire Inspector Curriculum, as specified in Chapter 4 of the Commission's Certification Curriculum Manual; or

(B) successful completion of an out-of-state and/or military training program which has been submitted to the Commission for evaluation and found to meet the minimum requirements as listed in the Commission-approved Basic Fire Inspector Curriculum as specified in Chapter 4 of the Commission's Certification Curriculum Manual; or

(C) successful completion of the following college courses:

(i) Fire Protection Systems, three semester hours;

(ii) Fire Prevention, three semester hours; or Fire Prevention Codes and Investigations, three semester hours;

(iii) Building Code, three semester hours;

(iv) Building Construction, three semester hours;

(v) Hazardous Materials, three semester hours. (Total semester hours, 15\*. NOTE: Building Code and Building Construction may be combined into a single three-semester hour class. If this is the case, the total semester hours may be reduced to 12. Hazardous Materials I or II may be used to satisfy the requirements of Hazardous Materials); or

(D) successful completion of a National Fire Academy program for fire inspection. The program must include the basic course, Fire Inspection Principles I, and two of the following courses or their successors:

(i) Fire Prevention Specialist II; or

(ii) Plans Review for Inspectors; or

(iii) Code Management: A Systems Approach; or

(iv) Management of Fire Prevention Programs; or

(v) Strategic Analysis of Fire Prevention Programs.

~~[(b)] A person who holds, or is eligible to hold, a certificate upon employment as a part-time fire inspector may be certified as a fire inspector, of the same level of certification, without meeting the applicable examination requirements.]~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 19, 2008.

TRD-200802607

Gary L. Warren, Sr.  
Executive Director  
Texas Commission on Fire Protection  
Earliest possible date of adoption: June 29, 2008  
For further information, please call: (512) 936-3838

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## CHAPTER 431. FIRE INVESTIGATION

### SUBCHAPTER A. MINIMUM STANDARDS FOR ARSON INVESTIGATOR CERTIFICATION

#### 37 TAC §431.3

The Texas Commission on Fire Protection (the Commission) proposes an amendment to Chapter 431, Fire Investigation, Subchapter A, Minimum Standards for Arson Investigator Certification, §431.3, Minimum Standards for Basic Arson Investigator Certification. The purpose of the proposed amendment is to delete unnecessary and confusing language concerning the certification of part-time arson investigators, and to correct grammatical errors.

Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal impact on state or local governments.

Mr. Soteriou has also determined that for each year of the first five years the proposed amendment is in effect, the expected benefit will be clarity for enforcement purposes.

Comments regarding this proposed amendment may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to [info@tcfp.state.tx.us](mailto:info@tcfp.state.tx.us). Comments will be reviewed and discussed at a future Commission meeting.

This amendment is proposed under Texas Government Code, §419.008, which provides the Commission with the authority to propose rules for the administration of its powers and duties.

Cross reference to statute: Texas Government Code, §419.0321.

*§431.3. Minimum Standards for Basic Arson Investigator Certification.*

[(a)] In order to be certified by the Commission [~~commission~~] as a Basic Arson Investigator an individual must:

- (1) possess a current basic peace officer's license from the Texas Commission on Law Enforcement Officer Standards and Education or documentation that the individual is a federal law enforcement officer;
- (2) hold a current Commission [~~commission~~] as a peace officer with the employing entity for which the arson investigations will be done; and
- (3) possess valid documentation of accreditation from the International Fire Service Accreditation Congress as a Fire Investigator; or
- (4) complete a Commission-approved [~~commission approved~~] basic fire investigation training program and successfully pass the Commission [~~commission~~] examination as specified in Chapter 439 of this title (relating to Examinations for Certification). An

approved fire investigation training program shall consist of one of the following:

(A) completion of the Commission-approved [~~commission approved~~] Fire Investigator Curriculum, as specified in Chapter 5 of the Commission's [~~commission's~~] Certification Curriculum Manual;

(B) successful completion of a National Fire Academy program for fire investigation. The program must include the basic course, Fire Arson Investigation, and two of the following courses or their predecessor:

- (i) Arson Detection;
- (ii) Fire Cause Determination for Company Officers;
- (iii) Initial Fire Investigation; or
- (iv) Management of Arson Prevention and Control.

(C) successful completion of an out-of-state or military training program which has been submitted to the Commission [~~commission~~] for evaluation and found to meet the minimum requirements as listed in the Commission-approved [~~commission approved~~] Fire Investigator Curriculum as specified in Chapter 5 of the Commission's [~~commission's~~] Certification Curriculum Manual; or

(D) successful completion of the following college courses: Arson Investigator, 3 semester hours; Hazardous Materials, 3 semester hours; Building Construction, 3 semester hours; Fire Protection Systems, 3 semester hours. Total semester hours, 12. The three-semester [~~three semester~~] hour course "Building Codes and Construction" may be substituted for Building Construction. Arson Investigator I or II may be used to satisfy the requirements of Arson Investigation. Hazardous Materials I or II may be used to satisfy the requirements of Hazardous Materials.

[(b)] A person who holds or is eligible to hold a certificate upon employment as a part-time arson investigator may be certified as an arson investigator, of the same level of certification, without meeting the applicable examination requirements.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 19, 2008.

TRD-200802608

Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

Earliest possible date of adoption: June 29, 2008

For further information, please call: (512) 936-3838

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## SUBCHAPTER B. MINIMUM STANDARDS FOR FIRE INVESTIGATOR CERTIFICATION

#### 37 TAC §431.203

The Texas Commission on Fire Protection (the Commission) proposes an amendment to Chapter 431, Fire Investigation, Subchapter B, Minimum Standards for Fire Investigator Certification, §431.203, Minimum Standards for Fire Investigator Certification. The purpose of the proposed amendment is to delete unnecessary and confusing language concerning the certification of part-time fire investigators.

Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal impact on state or local governments.

Jake Soteriou has also determined that for each year of the first five years the proposed amendment is in effect, there will be an expected public benefit will be clarity for enforcement purposes. There are no additional costs of compliance for small or large businesses or individuals that are required to comply with this proposed amendment.

Comments regarding this proposed amendment may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to [info@tcfp.state.tx.us](mailto:info@tcfp.state.tx.us). Comments will be reviewed and discussed at a future Commission meeting.

This amendment is proposed under Texas Government Code, §419.008, which provides the Commission with the authority to propose rules for the administration of its powers and duties.

Cross reference to statute: Texas Government Code, §419.0321.

*§431.203. Minimum Standards for Fire Investigator Certification.*

(a) In order to be certified by the Commission ~~[eommission]~~ as a Fire Investigator an individual must complete the requirements specified in §431.3(a)(3) or (4) of this title (relating to Minimum Standards for Basic Arson Investigator Certification).

~~[(b) A person who holds or is eligible to hold a certificate upon employment as a part-time fire investigator may be certified as a full-time fire investigator without meeting the applicable examination requirements.]~~

~~[(e)]~~ (b) A person who holds or is eligible to hold a certificate as a Fire Investigator may be certified as an Arson Investigator by meeting the requirements of Chapter 431, Subchapter A, but shall not be required to repeat the applicable examination requirements.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 19, 2008.

TRD-200802611

Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

Earliest possible date of adoption: June 29, 2008

For further information, please call: (512) 936-3838



## CHAPTER 435. FIRE FIGHTER SAFETY

### 37 TAC §435.3

The Texas Commission on Fire Protection (the Commission) proposes amendments to Chapter 435, Fire Fighter Safety, §435.3, Self-Contained Breathing Apparatus. The purpose of the proposed amendment is to change the method of referring to the most recent editions of the NFPA Standards, and to correct grammatical errors.

Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal impact on state or local governments.

Mr. Soteriou has also determined that for each year of the first five years the proposed amendment is in effect, an expected public benefit of enforcing the amendments is use of enforcement. There are no additional costs of compliance for small or large businesses or individuals that are required to comply with this proposed amendment.

Comments regarding this proposed amendment may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to [info@tcfp.state.tx.us](mailto:info@tcfp.state.tx.us). Comments will be reviewed and discussed at a future Commission meeting.

This amendment is proposed under Texas Government Code, §419.008, which provides the Commission with the authority to propose rules for the administration of its powers and duties.

Cross reference to statute: Texas Government Code, §419.041.

*§435.3. Self-Contained Breathing Apparatus.*

The employing entity shall:

(1) purchase, provide, and maintain a complete self-contained breathing apparatus for each on-duty ~~[on duty]~~ fire protection personnel who engage in operations where IDLH atmospheres may be encountered, where the atmosphere is unknown or would be exposed to hazardous atmospheres from fire or other emergencies or where the potential for such exposure exists;

(2) ensure that all self-contained breathing apparatus used by fire protection personnel complies with the minimum standards of the National Fire Protection Association identified in NFPA 1981, Standard on Open-Circuit Self-Contained Breathing Apparatus for Fire Fighters:

(A) (No change.)

(B) an entity may continue to use a self-contained breathing apparatus in use or contracted for before a change in the National Fire Protection Association standard ~~[that meets the requirements of an earlier edition of NFPA 1981]~~, unless the Commission determines that the continued use of the self-contained breathing apparatus constitutes an undue risk to the wearer, in which case the Commission shall order that the use be discontinued and shall set an appropriate date for compliance with the revised standard.

(3) develop an air quality program that complies with the most recent edition of the NFPA 1989 Standard on Breathing Air Quality for ~~[Fire and]~~ Emergency Services Respiratory Protection ~~[(2003 edition)]~~;

(4) - (5) (No change.)

(6) maintain~~[-]~~ and provide upon request by the Commission, a department standard operating procedure regarding the selection, care, and maintenance of self-contained breathing apparatus that complies with the most recent edition of the NFPA 1852 Standard on Selection, Care, and Maintenance of Open-Circuit Self-Contained Breathing Apparatus (SCBA) ~~[2002 Edition]~~.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 19, 2008.  
TRD-200802609  
Gary L. Warren, Sr.  
Executive Director  
Texas Commission on Fire Protection  
Earliest possible date of adoption: June 29, 2008  
For further information, please call: (512) 936-3838

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## CHAPTER 439. EXAMINATIONS FOR CERTIFICATION

### SUBCHAPTER A. EXAMINATIONS FOR ON-SITE DELIVERY TRAINING

#### 37 TAC §439.15, §439.17

The Texas Commission on Fire Protection (the Commission) proposes amendments to Chapter 439, Examinations for Certification, Subchapter A, §439.15, Testing for Proof of Proficiency, and §439.17, Testing for Certification Status. The purpose of the proposed amendments are to change the standards for renewal of an individual certificate once the certificate has expired and to make grammatical changes.

Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal impact on state or local governments.

Jake Soteriou has also determined that for each year of the first five years the proposed amendments are in effect, an expected public benefit will be clarity for enforcement purposes. There are no additional costs of compliance for small or large businesses or individuals that are required to comply with these proposed amendments.

Comments regarding these proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to [info@tcfp.state.tx.us](mailto:info@tcfp.state.tx.us). Comments will be reviewed and discussed at a future Commission meeting.

These amendments are proposed under Texas Government Code, §419.008, which provides the Commission with the authority to propose rules for the administration of its powers and duties.

Cross reference to statute: Texas Government Code, §419.034.

#### §439.15. *Testing for Proof of Proficiency.*

(a) An individual whose certificate has been expired for one year or longer may not renew the certificate that was previously held.

(b) The individual may obtain a new certificate in the discipline which was previously held by passing a Commission [~~commission~~] proficiency examination pertaining to the discipline held. [~~If performance skills are part of the proficiency examination, the individual may be exempted from that portion of the examination by documenting twenty hours of continuing education for each year since the expiration of the certificate for a maximum of five years. Individuals taking the exam based on the Basic Fire Suppression Curriculum do not have to show proof of medical training. The continuing education training must be done within the most recent five years and must be in subjects contained in the basic curriculum for the discipline. At least one-half~~

~~of the continuing education must be hands-on performance skills. The training must be conducted as specified in Chapter 441 of this title (relating to Continuing Education).]~~

(c) An individual or entity may petition the Commission [~~commission~~] for a waiver of the examination required by this section if the person's certificate expired because of the individual or employing entity's good faith clerical error, or expired as a result of termination of the person's employment where the person has been restored to employment through a disciplinary procedure or a court action. All required renewal fees including applicable late fees and all required continuing education must be submitted before the waiver request may be considered.

(1) Applicants claiming good faith clerical error must submit a sworn statement together with any supporting documentation that evidences the applicant's good faith efforts to comply with Commission [~~commission~~] renewal requirements and that failure to comply was due to circumstances beyond the control of the applicant.

(2) Applicants claiming restoration to employment as a result of a disciplinary or court action must submit a certified copy of the order restoring the applicant to employment.

#### §439.17. *Testing for Certification Status.*

(a) If an individual who has never held certification in a discipline defined in §421.5 of this title, seeks certification in that discipline, the individual shall:

(1) complete all certification requirements; and

(2) complete the examination process pertaining to that discipline. All portions of an examination must be passed before the individual is considered to have passed the examination. [~~If it has been less than four years since an individual passed the performance skills portion of an examination pertaining to a discipline, the individual may be exempted from that portion of the examination if the individual can document twenty hours of continuing education for each year since the individual last passed the performance skills portion of an examination pertaining to the discipline. The continuing education must be in subjects contained in the curriculum for the discipline. At least one-half of the continuing education must be hands-on performance skills. The training must be conducted as specified in Chapter 441 of this title (relating to Continuing Education).]~~

(b) If an individual completes an approved training program that has been evaluated and deemed equivalent to a certification curriculum approved by the Commission [~~commission~~], such as an out-of-state or military training program or a training program administered by the State Firemen and Fire Marshals' Association of Texas, the individual must pass a Commission [~~commission~~] examination for certification status and meet any other certification requirements in order to become eligible for certification by the Commission [~~commission~~] as fire protection personnel.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 19, 2008.

TRD-200802610  
Gary L. Warren, Sr.  
Executive Director  
Texas Commission on Fire Protection  
Earliest possible date of adoption: June 29, 2008  
For further information, please call: (512) 936-3838

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# WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

## TITLE 13. CULTURAL RESOURCES

### PART 3. TEXAS COMMISSION ON THE ARTS

#### CHAPTER 31. AGENCY PROCEDURES

##### 13 TAC §31.5, §31.11

The Texas Commission on the Arts withdraws the emergency amendments to §31.5 and §31.11 which appeared in the March 7, 2008, issue of the *Texas Register* (33 TexReg 1917).

Filed with the Office of the Secretary of State on May 15, 2008.

TRD-200802525

Gary Gibbs

Executive Director

Texas Commission on the Arts

Effective date: June 4, 2008

For further information, please call: (512) 936-6564

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#### CHAPTER 32. MEMORANDA OF UNDERSTANDING

##### 13 TAC §32.1

The Texas Commission on the Arts withdraws the emergency repeal of §32.1 which appeared in the March 7, 2008, issue of the *Texas Register* (33 TexReg 1918).

Filed with the Office of the Secretary of State on May 15, 2008.

TRD-200802526

Gary Gibbs

Executive Director

Texas Commission on the Arts

Effective date: June 4, 2008

For further information, please call: (512) 936-6564

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##### 13 TAC §32.1

The Texas Commission on the Arts withdraws emergency new §32.1 which appeared in the March 7, 2008, issue of the *Texas Register* (33 TexReg 1918).

Filed with the Office of the Secretary of State on May 15, 2008.

TRD-200802527

Gary Gibbs

Executive Director

Texas Commission on the Arts

Effective date: June 4, 2008

For further information, please call: (512) 936-6564

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# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 1. ADMINISTRATION

### PART 12. COMMISSION ON STATE EMERGENCY COMMUNICATIONS

#### CHAPTER 252. ADMINISTRATION

##### 1 TAC §§252.1, 252.2, 252.4

The Commission on State Emergency Communications (CSEC) adopts amendments to §§252.1, 252.2, and 252.4, concerning the administration of the exemption from 9-1-1 fees and surcharges, purchases of goods and services, and costs for public information, respectively, without changes to the proposed text as published in the April 4, 2008, issue of the *Texas Register* (33 TexReg 2767). CSEC takes no action at this time regarding the proposed amendments to §252.6 as published in the *Texas Register* (33 TexReg 2767).

Amendments to §252.1 consist of a reference to Health and Safety Code §771.074, exempting state or federal government from the 9-1-1 fees and surcharges, and to equate state government with state agency.

Amendments to §252.2 consist of deleting language governing CSEC's purchases of goods and services and to adopt by reference the Comptroller of Public Accounts' rules relating to the Historically Underutilized Business Program.

Amendments to §252.4 consist of deleting language governing the charges for responding to public information requests and to adopt by reference the Attorney General's rules regarding public information charges.

No comments were received regarding adoption of amendments to §§252.1, 252.2 or 252.4.

The amendments are adopted pursuant to the Health and Safety Code, Chapter 771, §771.051 and §771.074.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 19, 2008.

TRD-200802592

Patrick Tyler

General Counsel

Commission on State Emergency Communications

Effective date: June 8, 2008

Proposal publication date: April 4, 2008

For further information, please call: (512) 305-6930



##### 1 TAC §252.5

The Commission on State Emergency Communications (CSEC) adopts the repeal to §252.5, concerning local adoption of a state provision or CSEC rule, without changes. Notice of the proposed repeal of §252.5 was published in the April 4, 2008, issue of the *Texas Register* (33 TexReg 2769).

Repeal of §252.5 will eliminate the requirement that an emergency communication district must notify CSEC in writing of its voluntary adoption of any section of Health and Safety Code Chapter 771 or a CSEC rule.

No comments were received regarding the repeal of §252.5.

The repeal is adopted pursuant to the Health and Safety Code, Chapter 771, §771.051 and §771.062.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 19, 2008.

TRD-200802594

Patrick Tyler

General Counsel

Commission on State Emergency Communications

Effective date: June 8, 2008

Proposal publication date: April 4, 2008

For further information, please call: (512) 305-6930



## TITLE 13. CULTURAL RESOURCES

### PART 3. TEXAS COMMISSION ON THE ARTS

#### CHAPTER 31. AGENCY PROCEDURES

##### 13 TAC §31.5, §31.11

The Texas Commission on the Arts adopts amendments to §31.5, concerning Staff, and §31.11, concerning Gifts, Grants, and Donations, without changes to the proposed text as published in the March 7, 2008, issue of the *Texas Register* (33 TexReg 1939) and will not be republished.

Elsewhere in this issue of the *Texas Register*, the Texas Commission on the Arts contemporaneously withdraws the emergency amendments to §31.5 and §31.11 which were also published in the March 7, 2008, issue of the *Texas Register* (33 TexReg 1917). The withdrawal will be effective upon the effective date of the adoption of these sections.



The purpose of the amendment to §31.5 is to address issues related to employees of the Commission. The change to the rule removes references to procedures related to the Texas Cultural Endowment Fund. Issues related to the Texas Cultural Endowment Fund are addressed in the Texas Government Code §444.026 and in the Commission's Investment Policy and Gift Acceptance Policy.

Section 31.11(c)(5) does not accurately reflect the work of the Commission. The Commission does accept restricted gifts intended for the sole benefit of a single organization. Therefore the rule is amended.

No comments are received regarding adoption of the amendments.

The amendments are adopted under the Texas Government Code, §444.009, which provides the Texas Commission on the Arts with the authority to make rules and regulations for its government and that of its officers and committees.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 15, 2008.

TRD-200802528

Gary Gibbs

Executive Director

Texas Commission on the Arts

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Proposal publication date: March 7, 2008

For further information, please call: (512) 936-6564



## CHAPTER 32. MEMORANDA OF UNDERSTANDING

The Texas Commission on the Arts (TCA) proposes the repeal and replacement of §32.1, concerning Memoranda of Understanding, without changes to the proposed text as published in the March 7, 2008, issue of the *Texas Register* (33 TexReg 1940) and will not be republished.

Elsewhere in this issue of the *Texas Register*, the Texas Commission on the Arts contemporaneously withdraws the emergency repeal and replacement of §32.1, which was also published in the March 7, 2008, issue of the *Texas Register* (33 TexReg 1918). The withdrawal will be effective upon the effective date of the adoption of these sections.

Section 32.1 does not address all of the Memorandum of Understanding (MOU) agreements TCA is currently required to have in place and does not address the issue of future MOU agreements. This repeal and replacement will remedy both of those issues.

No comments were received regarding adoption of the rules.

### 13 TAC §32.1

The repeal is adopted under the Texas Government Code, §444.009, which provides the Texas Commission on the Arts with the authority to make rules and regulations for its government and that of its officers and committees

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Gary Gibbs

Executive Director

Texas Commission on the Arts

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### 13 TAC §32.1

The new section is adopted under the Texas Government Code, §444.009, which provides the Texas Commission on the Arts with the authority to make rules and regulations for its government and that of its officers and committees.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Gary Gibbs

Executive Director

Texas Commission on the Arts

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## CHAPTER 35. A GUIDE TO OPERATIONS, PROGRAMS AND SERVICES

### 13 TAC §35.2

The Texas Commission on the Arts (commission) adopts an amendment to §35.2, concerning A Guide to Programs and Services, without changes to the proposed text as published in the March 7, 2008, issue of the *Texas Register* (33 TexReg 1941) and will not be republished.

The purpose of the amendment is to update the Adoption by Reference material.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Government Code, §444.009, which provides the Texas Commission on the Arts with the authority to make rules and regulations for its government and that of its officers and committees.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Gary Gibbs  
Executive Director  
Texas Commission on the Arts  
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For further information, please call: (512) 936-6564



## **TITLE 16. ECONOMIC REGULATION**

### **PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION**

#### **CHAPTER 74. ELEVATORS, ESCALATORS, AND RELATED EQUIPMENT**

##### **16 TAC §74.80**

The Texas Department of Licensing and Regulation ("Department") adopts amendments to 16 Texas Administrative Code ("TAC"), Chapter 74, §74.80 regarding the Elevators, Escalators, and Related Equipment program application fees for initial and renewal inspector registrations, fees for certificates of compliance, and fees for initial and renewal contractor registrations without changes to the proposed text as published in the February 15, 2008, issue of the *Texas Register* (33 TexReg 1219) and will not be republished.

The amendments to §74.80(a) lower the application fee for an initial and a renewal inspector registration from \$100 to \$50. The amendments to §74.80(b)(1) lower the fee for a certificate of compliance from \$30 to \$20. The amendments to §74.80(e) lower the fees for an original and renewals of contractor registrations from \$300 to \$115.

The Texas Department of Licensing and Regulation ("Department") is required to set fees in amounts reasonable and necessary to cover the costs of administering the programs under its jurisdiction. Pursuant to the Department's annual fee review, the fees currently in place are above the amount required by the Department to cover costs. The decrease in fees would not adversely affect the administration and enforcement of the Elevators, Escalators, and Related Equipment program.

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposal was published in the *Texas Register* on February 15, 2008. The comment period closed on March 17, 2008. The Department did not receive any public comments on the proposed amendments.

The amendments are adopted under Texas Health and Safety Code, Chapter 754, Subchapter B, and Texas Occupations Code, Chapter 51, which authorizes the Department's governing body, the Texas Commission of Licensing and Regulation, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Health and Safety Code, Chapter 754, Subchapter B, and Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 12, 2008.

TRD-200802479  
William H. Kuntz, Jr.  
Executive Director  
Texas Department of Licensing and Regulation  
Effective date: June 1, 2008  
Proposal publication date: February 15, 2008  
For further information, please call: (512) 463-7348



### **CHAPTER 75. AIR CONDITIONING AND REFRIGERATION CONTRACTORS**

##### **16 TAC §75.80**

The Texas Commission of Licensing and Regulation ("Commission") adopts amendments to an existing rule at 16 Texas Administrative Code ("TAC"), Chapter 75, §75.80, regarding contractor license fees for the Air Conditioning and Refrigeration program, without changes to the proposed text as published in the January 18, 2008, issue of the *Texas Register* (33 TexReg 468) and will not be republished.

The amendments to §75.80 lower the application fee for an initial contractor license from \$130 to \$115 and lower the application fee for a renewal contractor license from \$80 to \$65. The amendments also clarify that the license fees are applicable to contractors, since §75.80 was previously amended to include registration fees for air conditioning and refrigeration technicians and persons purchasing and using refrigerants.

The Texas Department of Licensing and Regulation ("Department") is required to set fees in amounts reasonable and necessary to cover the costs of administering the programs under its jurisdiction. Pursuant to the Department's annual fee review, the fees currently in place are above the amount required by the Department to cover costs. The decrease in fees would not adversely affect the administration and enforcement of the Air Conditioning and Refrigeration program.

The proposed amendments were published in the *Texas Register* on January 18, 2008. The comment period closed on February 18, 2008. The Department did not receive any public comments on the proposed amendments.

The amendments are adopted under Texas Occupations Code, Chapter 1302 and Chapter 51, which authorizes the Department's governing body, the Texas Commission of Licensing and Regulation, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 1302 and Chapter 51. No other statutes, articles, or codes are affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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William H. Kuntz, Jr.  
Executive Director  
Texas Department of Licensing and Regulation  
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For further information, please call: (512) 463-7348

## TITLE 22. EXAMINING BOARDS

### PART 14. TEXAS OPTOMETRY BOARD

#### CHAPTER 273. GENERAL RULES

##### 22 TAC §273.10

The Texas Optometry Board adopts amendments to §273.10 with changes to the proposed text published in the March 14, 2008, issue of the *Texas Register* (33 TexReg 2104).

The amendments impose the procedure authorized by Senate Bill 288, 80th Legislature, which limits license renewal when the agency is notified that a licensee is in arrears on court ordered child support, and permits the agency to charge a fee to recover administrative costs

No comments were received.

The amendment is adopted under the Texas Optometry Act, Texas Occupations Code, §351.151 and Senate Bill 288, 80th Legislature, Texas Family Code §232.0135. No other sections are affected by the amendments.

The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession. Texas Family Code §232.0135 requires the agency to refuse to renew a license when requested to do so by a child support agency and allows the agency to recoup costs.

§273.10. *Licensee Compliance with Payment Obligations.*

(a) Texas Guaranteed Student Loan Corporation

(1) If, after a hearing or an opportunity for hearing, the board determines that a licensee is in default on a loan guaranteed by the Texas Guaranteed Student Loan Corporation, the license shall not be renewed unless the licensee presents a certificate issued by the corporation certifying that:

(A) the licensee has entered into a repayment agreement on the defaulted loan; or

(B) the licensee is not in default on a loan guaranteed by the corporation.

(2) If, after a hearing or an opportunity for hearing, the board determines that a licensee has defaulted on a repayment agreement with the Texas Guaranteed Student Loan Corporation, the license shall not be renewed unless the licensee presents a certificate issued by the corporation certifying that:

(A) the licensee has entered into another repayment agreement on the defaulted loan; or

(B) the licensee is not in default on a loan guaranteed by the corporation or on a repayment agreement.

(b) Child support payments; Chapter 232 of the Texas Family Code

(1) An application for license renewal will not be accepted if a child support agency provides the board with notice that a licensee has failed to pay child support for six months or more and requests that the board not accept the application.

(2) The application will be considered once the board receives notice from the child support agency that the licensee is in compliance with the requirements of Chapter 232 of the Texas Family Code.

(3) The board may charge the licensee a fee in an amount sufficient to recover the administrative costs incurred by the board under this chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Chris Kloeris

Executive Director

Texas Optometry Board

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For further information, please call: (512) 305-8502

#### CHAPTER 275. CONTINUING EDUCATION

##### 22 TAC §275.1

The Texas Optometry Board adopts amendments to §275.1 with changes to the proposed text published in the March 14, 2008, issue of the *Texas Register* (33 TexReg 2105).

The amendments require licensees to obtain one of the 16 hours of continuing education in a course covering professional responsibility administered by an instate optometry school or college.

No comments were received.

The amendment is adopted under the Texas Optometry Act, Texas Occupations Code, §351.151 and §351.308. No other sections are affected by the amendments.

The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession. Section 351.308 sets the requirements for the continuing education each licensee must take annually.

§275.1. *General Requirements.*

(a) The Act requires each optometrist licensed in this state to take 16 hours of continuing education per calendar year with at least six hours in the diagnosis or treatment of ocular disease. Beginning with the 2010 license renewal, the subject of at least one hour of the required 16 hours shall be professional responsibility. The calendar year is considered to begin January 1 and run through December 31.

(b) The board accepts for continuing education credit all courses sponsored by any board-accredited college or schools of optometry and such other programs or courses of other organizations as are approved by the board upon recommendation from the Continuing Education Committee, appointed by the Board Chair. The Continuing Education Committee will consider, among other things in its discretion, the following criteria in approving courses and classifying

the hours as general, diagnosis or treatment of ocular disease, and professional responsibility:

(1) all subjects of education must be directly related to optometry;

(2) courses sponsored by or given by accredited optometry schools will be granted automatic approval as limited by paragraph (9) of this subsection;

(3) courses meeting evaluation standards and receiving approval of the Association of Regulatory Boards of Optometry will be granted automatic approval as limited by paragraph (9) of this subsection;

(4) courses sponsored by optometric organizations may be given approval;

(5) courses sponsored by universities or accredited nonoptometric schools may be given approval if the subject matter is directly related to optometry;

(6) correspondence courses sponsored and graded by accredited optometry schools may be given approval. The maximum number of hours allowed for these courses is set out in §275.2(f) of this title;

(7) courses sponsored by individual providers may be approved but providers must supply the committee with a synopsis of the lecture material to be presented, itinerary including time in the class, and resumes of the lecturers;

(8) on-line computer courses with post-course testing sponsored by the Association of Regulatory Boards of Optometry or by accredited optometry schools. The maximum number of hours allowed for these courses is set out in §275.2(f) of this title.

(9) courses in professional responsibility given by a board accredited institute college or school of optometry may be given approval if the course:

(A) is made available as a live course in this state and on the internet, and

(B) includes the study of professional ethics, the Texas Optometry Act and Board Rules, judicious prescribing of dangerous drugs, pain management, or drug abuse by professionals.

(c) Licensees who have not complied with the education requirements may not be issued a renewal license unless such person is entitled to an exemption under Section 351.309 of the Act. The following persons are exempt:

(1) a licensee who holds a Texas license, but does not practice optometry in Texas; provided, however, that if at any time during the calendar year for which such exemption has been obtained such person desires to practice optometry, such person shall not be entitled to practice optometry in Texas until 16 hours of continuing education credits are obtained and the board has been notified of the completion of such continuing education requirements;

(2) a licensee who served in the regular armed forces of the United States during part of the 12 months immediately preceding the annual license renewal date;

(3) a licensee who submits proof satisfactory to the board that the licensee suffered a serious or disabling illness or physical disability which prevented the licensee from complying with the requirements of this section during the 12 months immediately preceding the annual license renewal date; provided, however, that in lieu of claiming the exemption, a licensee who has submitted the requisite proof

of illness or disability may elect to obtain the education requirement by correspondence or multi-media courses sponsored, monitored, or graded by colleges of optometry; or

(4) a licensee who is first licensed within the 12 months immediately preceding the annual renewal date.

(d) Approved courses must be available to all Texas licensed optometrists at a fee considered reasonable and nondiscriminatory.

(e) Summaries of the courses and resumes of those teaching must be submitted to the board's Continuing Education Committee for approval or disapproval. This information should be received 60 days prior to the date the course is to take place.

(f) Written proof of attendance and completion of approved courses must be supplied by the licensed optometrist to the board in conjunction with the renewal application for an optometry license. If the licensed optometrist is practicing in Texas, the licensee should submit the original proof of attendance or the approved sponsors of continuing education may submit to the board written proof of attendance and completion of approved courses on behalf of the licensed optometrist. Information such as the following will be required: sponsoring organizations; location and dates; course names; instructors; names of attendee; number of education hours completed; and any other information deemed necessary by the board. Proof of attendance supplied by the sponsor should contain at least one signature of the sponsor's designee.

(g) An applicant for or a licensee renewing the Retired License shall obtain 8 hours of board approved continuing education prior to receiving or renewing the license. All of the hours may be obtained on the Internet or by correspondence. At least one half of these hours must be diagnostic/therapeutic as approved by the board.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Chris Kloeris

Executive Director

Texas Optometry Board

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For further information, please call: (512) 305-8502



## CHAPTER 280. THERAPEUTIC OPTOMETRY

### 22 TAC §280.8

The Texas Optometry Board adopts amendments to §280.8 without changes to the proposed text published in the March 7, 2008, issue of the *Texas Register* (33 TexReg 1954).

The amendments allow approved schools or colleges of optometry to show that the course work, examination and skill evaluation requirements of the optometric glaucoma specialist application are part of the current course work and examination curriculum. Applicants from such programs may have the required skills evaluation performed by an optometric glaucoma specialist.

No comments were received.

The amendment is adopted under the Texas Optometry Act, Texas Occupations Code, §351.151 and §351.3581. No other sections are affected by the amendments.

The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession. Section 351.3581 sets the requirements for optometric glaucoma specialist license.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Chris Kloeris

Executive Director

Texas Optometry Board

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For further information, please call: (512) 305-8502



## PART 15. TEXAS STATE BOARD OF PHARMACY

### CHAPTER 281. ADMINISTRATIVE PRACTICE AND PROCEDURES

#### SUBCHAPTER C. DISCIPLINARY GUIDELINES

##### 22 TAC §281.63, §281.64

The Texas State Board of Pharmacy adopts amendments to §281.63, concerning Considerations for Criminal Offenses, and §281.64, concerning Sanctions for Criminal Offenses. The amendments are adopted without changes to the proposed text as published in the March 21, 2008, issue of the *Texas Register* (33 TexReg 2454).

The amendments clarify that the crime of driving while intoxicated is considered to be directly related to the duties and responsibilities of licensees and registrants, and clarify that the sanction guidelines apply to licensees and registrants including applicants. In addition, the amendments change the title of §281.64 from Sanctions for Applicants with Criminal Offenses to Sanctions for Criminal Offenses.

Written comments regarding §281.63 were received from the Texas Pharmacy Association. The Texas Pharmacy Association commented that including the offense of driving while intoxicated would inordinately heighten the severity and consequences of driving while intoxicated and suggested that the crime not be included on the list. The Board disagrees with this comment. Including the crime of driving while intoxicated in the list of crimes directly related to the duties and responsibilities of board licensees or registrants gives the Board the authority to review the matter when considering crimes but does not associate a specific sanction with the crime.

The amendments are adopted under §551.002, and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective

control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the amendments: Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

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For further information, please call: (512) 305-8028



## CHAPTER 283. LICENSING REQUIREMENTS FOR PHARMACISTS

### 22 TAC §§283.1, 283.2, 283.4 - 283.6

The Texas State Board of Pharmacy adopts amendments to §283.1, concerning Purpose, §283.2, concerning Definitions, §283.4, concerning Internship Requirements, §283.5, concerning Pharmacist-Intern Duties, and §283.6, concerning Preceptor Requirements and Ratio of Preceptors of Pharmacist-Interns. The amendments to §§283.2, 283.5, and 283.6 are adopted with changes to the proposed text to further clarify definition of an intern-trainee and the ratio of preceptors to pharmacist-interns. The amendments to §283.1 and §283.4 are adopted without changes to the proposed text as published in the March 21, 2008, issue of the *Texas Register* (33 TexReg 2456).

The amendments implement recommendations from the Task Force on Internship Requirements; update definitions and add a new definition for an intern-trainee; update the goals and objectives to be consistent with new guidelines set forth by the Accreditation Council for Pharmacy Education; outline the requirements for individuals applying to the Board as an intern-trainee; authorize the executive director to extend the terms of an extended internship if the administration of the NAPLEX and/or Texas Jurisprudence Examinations is delayed; clarify the duties that may be performed by an intern-trainee working under a pharmacist preceptor serving as an instructor for a Texas college/school-based internship program; define the ratios of preceptors to pharmacist-interns; and rename §283.6 to Preceptor Requirements and Ratio of Preceptors of Pharmacist-Interns.

Written comments were received: H.E.B., the National Association of Chain Drug Stores (NACDS), and the Texas Federation of Drug Stores commented that the intern-trainees should include students from out-of-state schools/colleges of pharmacy not only Texas schools/colleges and intern-trainees should not be restricted to working only at sites assigned by the schools/colleges. The Board disagrees with this comment. Intern-trainees are first year pharmacy students, possibly with limited pharmacy experience. Allowing intern-trainees to work outside the school/college programs could potentially create confusion regarding the activities performed by intern-trainees. NACDS also commented that the ratio requirements should allow a pharma-

cist-preceptor to supervise more than one pharmacist-intern in certain circumstances. The rules do allow a pharmacist-preceptor to supervise one intern-trainee and one student-intern and there is no ratio requirement for preceptors supervising intern-trainees and student interns when the intern-trainees and student-interns are not engaging in dispensing activities, patient counseling, or any activities requiring independent judgment.

The amendments are adopted under §551.002, and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the amendments: Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§283.2. *Definitions.*

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) ACPE--Accreditation Council for Pharmacy Education.

(2) Applicant--An individual having applied for licensure to act as a pharmacist in Texas.

(3) Approved continuing education--Continuing education which meets the requirements of §295.8 of this title (relating to Continuing Education Requirements).

(4) Board--The Texas State Board of Pharmacy; all members, divisions, departments, sections, and employees thereof.

(5) BS in pharmacy--A Bachelor of Science degree in pharmacy.

(6) Competency--A demonstrated state of preparedness for the realities of professional pharmacy practice.

(7) Didactic--Systematic classroom instruction.

(8) Direct supervision--A pharmacist preceptor or healthcare professional preceptor is physically present and on-site at the licensed location of the pharmacy where the pharmacist-intern is performing pharmacist-intern duties.

(9) Extended-intern--An intern, registered with the board, who has:

(A) applied to the board for licensure by examination and has successfully passed the NAPLEX and Texas Pharmacy Jurisprudence Examination but lacks the required number of hours of internship for licensure; or

(B) applied to the board to take the NAPLEX and Texas Jurisprudence Examinations within three calendar months after graduation and has either:

(i) graduated and received a professional degree from a college/school of pharmacy the professional degree program of which has been accredited by ACPE and approved by the board; or

(ii) completed all of the requirements for graduation and for receipt of a professional degree from a college/school of pharmacy the professional degree program of which has been accredited by ACPE and approved by the board; or

(C) applied to the board to take the NAPLEX and Texas Jurisprudence Examinations within three calendar months after obtain-

ing full certification from the Foreign Pharmacy Graduate Equivalency Commission; or

(D) applied to the Board for re-issuance of a pharmacist license which has been expired for more than two years but less than ten years and has successfully passed the Texas Pharmacy Jurisprudence examination, but lacks the required number of hours of internship or continuing education required for licensure; or

(E) been ordered by the Board to complete an internship.

(10) Foreign pharmacy graduate--A pharmacist whose pharmacy degree was conferred by a pharmacy school whose professional degree program has not been accredited by ACPE and approved by the board.

(11) FPGEC--The Foreign Pharmacy Graduate Equivalency Commission.

(12) FPGEE--The Foreign Pharmacy Graduate Equivalency Examination, given by FPGEC.

(13) Healthcare Professional--An individual licensed as:

(A) a physician in Texas or another state; or

(B) a pharmacist in a state other than Texas but not licensed in Texas.

(14) Healthcare Professional Preceptor--A healthcare professional serving as an instructor for a Texas college/school-based internship program who is recognized by a Texas college/school of pharmacy to supervise and be responsible for the activities and functions of a student-intern or intern-trainee in the internship program.

(15) Intern-trainee--A pharmacist intern, registered with the board, who is enrolled in the first year of the professional sequence of a Texas college/school of pharmacy and who may only work during times and in sites assigned by a Texas college/school of pharmacy.

(16) Internship--A practical experience program that is approved by the board.

(17) MPJE--Multistate Pharmacy Jurisprudence Examination.

(18) NABP--The National Association of Boards of Pharmacy.

(19) NAPLEX--The North American Pharmacy Licensing Examination, or its predecessor, the National Association of Boards of Pharmacy Licensing Examination.

(20) Pharm D--A doctorate in pharmacy.

(21) Pharmaceutical care--The provision of drug therapy and other pharmaceutical services defined in the rules of the board and intended to assist in the cure or prevention of a disease, elimination or reduction of a patient's symptoms, or arresting or slowing of a disease process.

(22) Pharmacist-intern--An intern-trainee, a student-intern, or an extended-intern who is participating in a board approved internship program.

(23) Pharmacist Preceptor--A pharmacist licensed in Texas to practice pharmacy who meets the requirements under board rules and is recognized by the board to supervise and be responsible for the activities and functions of a pharmacist-intern in an internship program.

(24) Preceptor--A pharmacist preceptor or a healthcare professional preceptor.

(25) Professional degree--A baccalaureate in pharmacy (BS) or a doctorate of pharmacy (Pharm D) degree.

(26) State--One of the 50 United States of America, the District of Columbia, and Puerto Rico.

(27) Student-intern--A pharmacist-intern, registered with the board who is enrolled in the professional sequence of a college/school of pharmacy, has completed the first professional year and obtained a minimum of 30 credit hours of work towards a professional degree in pharmacy, and is participating in a board-approved internship program.

(28) Texas Pharmacy Jurisprudence Exam or Texas Drug and Pharmacy Jurisprudence Examination--A licensing exam developed or approved by the Board which evaluates an applicant's knowledge of the drug and pharmacy requirements to practice pharmacy legally in the state of Texas.

*§283.5. Pharmacist-Intern Duties.*

(a) A student-intern or an extended-intern participating in a board-approved internship program may perform any duty of a pharmacist provided the duties are delegated by and under the supervision of:

- (1) a pharmacist licensed by the board and approved as a preceptor by the board; or
- (2) a pharmacist licensed in a state other than Texas when working in a federal facility and serving as an instructor for a Texas college-based internship program.

(b) A pharmacist preceptor serving as an instructor for a Texas college/school-based internship program, may delegate the following duties to an intern-trainee working in a site assigned by a Texas college/school of pharmacy board approved program provided the intern-trainee is under the direct supervision of the pharmacist preceptor:

- (1) initiating and receiving refill authorization requests;
- (2) entering prescription data into a data processing system;
- (3) taking a stock bottle from the shelf for a prescription;
- (4) preparing and packaging prescription drug orders (i.e., counting tablets/capsules, measuring liquids, and placing them in the prescription container);
- (5) affixing prescription labels and auxiliary labels to the prescription container;
- (6) reconstituting medication;
- (7) repackaging and labeling prepackaged drugs;
- (8) loading bulk unlabeled drugs into an automated dispensing system provided a pharmacist verifies that the system is properly loaded prior to use;
- (9) bulk compounding;
- (10) compounding non-sterile preparations provided the intern-trainee has completed the training required for pharmacists in §291.131 of this title (relating to Pharmacist Compounding Non-sterile Preparations);
- (11) compounding sterile preparations provided the intern-trainee has completed the training required for pharmacists in §291.133 of this title (relating to Pharmacies Compounding Sterile Preparations); and
- (12) administering immunizations provided the intern-trainee has completed the training required for pharmacists in

§295.15 of this title (relating to Administration of Immunizations or Vaccinations by a Pharmacist under Written Protocol of a Physician).

(c) When not under the supervision of a pharmacist preceptor, a student-intern or an extended-intern may function as a pharmacy technician and perform all of the duties of a pharmacy technician without registering as a pharmacy technician provided the pharmacist-intern:

- (1) is registered with the board as a pharmacist-intern;
- (2) is under the direct supervision of a pharmacist;
- (3) has completed the pharmacy's on-site technician training program;
- (4) has completed the training required for pharmacists in §291.133 of this title (relating to Pharmacies Compounding Sterile Preparations); and
- (5) is not counted as a pharmacy technician in the ratio of pharmacists to pharmacy technicians. The ratio of pharmacists to pharmacist-interns shall be 1:1 when performing pharmacy technician duties.

(d) A pharmacist-intern may not:

- (1) present or identify himself/herself as a pharmacist;
- (2) sign or initial any document which is required to be signed or initialed by a pharmacist unless a preceptor cosigns the document; or
- (3) independently supervise pharmacy technicians or pharmacy technician trainees.

*§283.6. Preceptor Requirements and Ratio of Preceptors to Pharmacist-Interns.*

(a) Preceptor requirements.

(1) Preceptors shall be:

(A) a pharmacist whose license to practice pharmacy in Texas is current and not on inactive status with the board; or

(B) a healthcare professional preceptor.

(2) A pharmacist preceptor shall publicly display the pharmacist preceptor certificate with his/her license to practice pharmacy and the license renewal certificate.

(3) To be recognized as a pharmacist preceptor, a pharmacist must:

(A) have at least:

(i) one year of experience as a licensed pharmacist in the type of internship practice setting; or

(ii) six months of residency training if the pharmacy resident is in a program accredited by the American Society of Health-System Pharmacists;

(B) have completed:

(i) for initial certification, three hours of pharmacist preceptor training provided by an ACPE approved provider within the previous two years. Such training shall be:

(I) developed by a Texas college/school of pharmacy; or

(II) approved by:

(-a-) a committee comprised of the Texas college/schools of pharmacy; or

(-b-) the board; or

(ii) to continue certification, three hours of pharmacist preceptor training provided by an ACPE approved provider within the pharmacist's current license renewal period. Such training shall be:

- (I) developed by a Texas college/school of pharmacy; or
- (II) approved by:
  - (-a-) a committee comprised of the Texas college/schools of pharmacy; or
  - (-b-) the board; and

(C) meet the requirements of subsection (c) of this section.

(b) Ratio of preceptors to pharmacist-interns.

(1) A preceptor may supervise only one pharmacist-intern at any given time (1:1 ratio) except as provided in paragraph (2) of this subsection.

(2) The following is applicable to Texas college/school of pharmacy internship program only.

(A) Supervision. Supervision of a pharmacist-intern shall be:

- (i) direct supervision when the student-intern or intern-trainee is engaged in functions associated with the preparation and delivery of prescription or medication drug orders; and
- (ii) general supervision when the student-intern or intern-trainee is engaged in functions not associated with the preparation and delivery of prescription or medication drug orders.

(B) Exceptions to the 1:1 ratio.

- (i) There is no ratio requirement for preceptors supervising intern-trainees and student-interns as a part of a Texas college/school of pharmacy when the intern-trainees and student-interns are not engaging in dispensing activities, patient counseling, or any activities requiring independent judgement.
- (ii) A preceptor for a Texas college/school of pharmacy internship program may supervise one intern-trainee and one student-intern except as described in clause (i) of this subparagraph.
- (iii) Texas college/schools of pharmacy may request a different preceptor to pharmacist-intern ratio during the board's annual review and approval of their college/school based, structured internship program. Any such ratio shall apply only to the internship experience acquired as a part of the college/school based, structured internship program.
- (iv) In an emergency caused by a natural or man-made disaster or any other exceptional situation that causes an extraordinary demand for preceptors, the executive director of the board, in his/her discretion, may allow a preceptor in a Texas college/school of pharmacy internship program to supervise up to two interns. The executive director shall notify the Texas colleges/schools of pharmacy of the length of time a preceptor may supervise up to two interns.

(c) No pharmacist may serve as a pharmacist preceptor if his or her license to practice pharmacy has been the subject of an order of the board imposing any penalty set out in the Act, §565.051, during the period he or she is serving as a pharmacist preceptor or within the three-year period immediately preceding application for approval as a pharmacist preceptor. Provided, however, a pharmacist who has been the subject of such an order of the board may petition the board, in writing, for approval to act as a pharmacist preceptor. The board may consider the following items in approving a pharmacist's petition to act as a pharmacist preceptor:

- (1) the type and gravity of the offense for which the pharmacist's license was disciplined;
- (2) the length of time since the action that caused the order;
- (3) the length of time the pharmacist has previously served as a preceptor;
- (4) the availability of other preceptors in the area;
- (5) the reason(s) the pharmacist believes he/she should serve as a preceptor;
- (6) a letter of recommendation from a Texas college/school of pharmacy if the pharmacist will be serving as a pharmacist preceptor for a Texas college/school of pharmacy; and
- (7) any other factor presented by the pharmacist demonstrating good cause why the pharmacist should be allowed to act as a pharmacist preceptor.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Gay Dodson, R.Ph.

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For further information, please call: (512) 305-8028



## CHAPTER 291. PHARMACIES

### SUBCHAPTER F. NON-RESIDENT PHARMACY (CLASS E)

#### 22 TAC §291.104

The Texas State Board of Pharmacy adopts amendments to §291.104, concerning Operation Standards. The amendments are adopted with changes to the proposed text published in the March 21, 2008, issue of the *Texas Register* (33 TexReg 2467) based on comments received.

The amendments clarify the labeling requirements for Class E pharmacies shipping prescriptions to Texas residents.

Written comments were received from the National Association of Chain Drug Stores. The National Association of Chain Drug Stores (NACDS) commented that it may be problematic for some non-resident pharmacies to comply with placing the dispensing pharmacist's initials or identification code on the prescription label. NACDS recommended deleting these requirements. NACDS also commented that non-resident pharmacies generally provide notification to patients regarding the generic substitution of a drug product but in slightly different language. NACDS recommended that the requirement be modified to allow statements with the same intent. The Board agrees with these comments and modified the rules for the non-resident pharmacies.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board



interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the amendments: Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

*§291.104. Operational Standards.*

(a) Licensing requirements.

(1) A Class E pharmacy shall register annually or biennially with the board on a pharmacy license application provided by the board.

(2) On initial application, the pharmacy shall follow the procedures specified in §291.1 of this title (relating to Pharmacy License Application) and provide the following additional information specified in §560.052(c) and (f) of the Act (relating to Qualifications):

(A) evidence that the applicant holds a pharmacy license, registration, or permit issued by the state in which the pharmacy is located;

(B) the name of the owner and pharmacist-in-charge of the pharmacy for service of process;

(C) evidence of the applicant's ability to provide to the board a record of a prescription drug order dispensed by the applicant to a resident of this state not later than 72 hours after the time the board requests the record;

(D) an affidavit by the pharmacist-in-charge which states that the pharmacist has read and understands the laws and rules relating to a Class E pharmacy;

(E) proof of creditworthiness; and

(F) an inspection report issued not more than two years before the date the license application is received and conducted by the pharmacy licensing board in the state of the pharmacy's physical location.

(i) A Class E pharmacy may submit an inspection report issued by an entity other than the pharmacy licensing board of the state in which the pharmacy is physically located if the state's licensing board does not conduct inspections as follows:

(I) an individual approved by the board who is not employed by the pharmacy but acting as a consultant to inspect the pharmacy;

(II) an agent of the National Association of Boards of Pharmacy;

(III) an agent of another State Board of Pharmacy; or

(IV) an agent of an accrediting body, such as the Joint Commission on Accreditation of Healthcare Organizations.

(ii) The inspection must be substantively equivalent to an inspection conducted by the board.

(3) On renewal of a license, the pharmacy shall complete the renewal application provided by the board and, as specified in §561.031 of the Act, provide an inspection report issued not more than three years before the date the renewal application is received and conducted by the pharmacy licensing board in the state of the pharmacy's physical location.

(A) A Class E pharmacy may submit an inspection report issued by an entity other than the pharmacy licensing board of the

state in which the pharmacy is physically located if the state's licensing board does not conduct inspections as follows:

(i) an individual approved by the board who is not employed by the pharmacy but acting as a consultant to inspect the pharmacy;

(ii) an agent of the National Association of Boards of Pharmacy;

(iii) an agent of another State Board of Pharmacy; or

(iv) an agent of an accrediting body, such as the Joint Commission on Accreditation of Healthcare Organizations.

(B) The inspection must be substantively equivalent to an inspection conducted by the board.

(4) A Class E pharmacy which changes ownership shall notify the board within ten days of the change of ownership and apply for a new and separate license as specified in §291.3 of this title (relating to Required Notifications).

(5) A Class E pharmacy which changes location and/or name shall notify the board within ten days of the change and file for an amended license as specified in §291.3 of this title.

(6) A Class E pharmacy owned by a partnership or corporation which changes managing officers shall notify the board in writing of the names of the new managing officers within ten days of the change, following the procedures in §291.3 of this title.

(7) A Class E pharmacy shall notify the board in writing within ten days of closing.

(8) A separate license is required for each principal place of business and only one pharmacy license may be issued to a specific location.

(9) A fee as specified in §291.6 of this title (relating to Pharmacy License Fees) will be charged for the issuance and renewal of a license and the issuance of an amended license.

(10) The board may grant an exemption from the licensing requirements of this Act on the application of a pharmacy located in a state of the United States other than this state that restricts its dispensing of prescription drugs or devices to residents of this state to isolated transactions.

(11) A Class E pharmacy engaged in the centralized dispensing of prescription drug or medication orders shall comply with the provisions of §291.125 of this title (relating to Centralized Prescription Dispensing).

(12) A Class E pharmacy engaged in central processing of prescription drug or medication orders shall comply with the provisions of §291.123 of this title (relating to Central Prescription or Medication Order Processing).

(13) A Class E (Non-Resident) pharmacy engaged in the compounding of non-sterile preparations shall comply with the provisions of §291.131 of this title (relating to Pharmacies Compounding Non-Sterile Preparations).

(14) A Class E (Non-Resident) pharmacy engaged in the compounding of sterile preparations shall comply with the provisions of §291.133 of this title (relating to Pharmacies Compounding Sterile Preparations).

(b) Prescription dispensing and delivery.

(1) General.

(A) All prescription drugs and/or devices shall be dispensed and delivered safely and accurately as prescribed.

(B) The pharmacy shall maintain adequate storage or shipment containers and use shipping processes to ensure drug stability and potency. Such shipping processes shall include the use of packaging material and devices to ensure that the drug is maintained at an appropriate temperature range to maintain the integrity of the medication throughout the delivery process.

(C) The pharmacy shall utilize a delivery system which is designed to assure that the drugs are delivered to the appropriate patient.

(D) All Pharmacists shall exercise sound professional judgment with respect to the accuracy and authenticity of any prescription drug order they dispense. If the pharmacist questions the accuracy or authenticity of a prescription drug order, he/she shall verify the order with the practitioner prior to dispensing.

(E) Prior to dispensing a prescription, pharmacists shall determine, in the exercise of sound professional judgment, that the prescription is a valid prescription. A pharmacist may not dispense a prescription drug if the pharmacist knows or should have known that the prescription was issued on the basis of an Internet-based or telephonic consultation without a valid patient-practitioner relationship.

(F) Subparagraph (E) of this paragraph does not prohibit a pharmacist from dispensing a prescription when a valid patient-practitioner relationship is not present in an emergency situation (e.g. a practitioner taking calls for the patient's regular practitioner).

(2) Drug regimen review.

(A) For the purpose of promoting therapeutic appropriateness, a pharmacist shall prior to or at the time of dispensing a prescription drug order, review the patient's medication record. Such review shall at a minimum identify clinically significant:

- (i) inappropriate drug utilization;
- (ii) therapeutic duplication;
- (iii) drug-disease contraindications;
- (iv) drug-drug interactions;
- (v) incorrect drug dosage or duration of drug treatment;
- (vi) drug-allergy interactions; and
- (vii) clinical abuse/misuse.

(B) Upon identifying any clinically significant conditions, situations, or items listed in subparagraph (A) of this paragraph, the pharmacist shall take appropriate steps to avoid or resolve the problem including consultation with the prescribing practitioner. The pharmacist shall document such occurrences.

(3) Patient counseling and provision of drug information.

(A) To optimize drug therapy, a pharmacist shall communicate to the patient or the patient's agent, information about the prescription drug or device which in the exercise of the pharmacist's professional judgment the pharmacist deems significant, such as the following:

- (i) the name and description of the drug or device;
- (ii) dosage form, dosage, route of administration, and duration of drug therapy;

(iii) special directions and precautions for preparation, administration, and use by the patient;

(iv) common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur;

(v) techniques for self monitoring of drug therapy;

(vi) proper storage;

(vii) refill information; and

(viii) action to be taken in the event of a missed dose.

(B) Such communication:

(i) shall be provided with each new prescription drug order;

(ii) shall be provided for any prescription drug order dispensed by the pharmacy on the request of the patient or patient's agent;

(iii) shall be communicated orally in person unless the patient or patient's agent is not at the pharmacy or a specific communication barrier prohibits such oral communication; and

(iv) shall be reinforced with written information. The following is applicable concerning this written information:

(I) Written information designed for the consumer, such as the USP DI patient information leaflets, shall be provided.

(II) When a compounded product is dispensed, information shall be provided for the major active ingredient(s), if available.

(III) For new drug entities, if no written information is initially available, the pharmacist is not required to provide information until such information is available, provided:

(-a-) the pharmacist informs the patient or the patient's agent that the product is a new drug entity and written information is not available;

(-b-) the pharmacist documents the fact that no written information was provided; and

(-c-) if the prescription is refilled after written information is available, such information is provided to the patient or patient's agent.

(C) Only a pharmacist may orally provide drug information to a patient or patient's agent and answer questions concerning prescription drugs. Non-pharmacist personnel may not ask questions of a patient or patient's agent which are intended to screen and/or limit interaction with the pharmacist.

(D) If prescriptions are routinely delivered outside the area covered by the pharmacy's local telephone service, the pharmacy shall provide a toll-free telephone line which is answered during normal business hours to enable communication between the patient and a pharmacist.

(E) The pharmacist shall place on the prescription container or on a separate sheet delivered with the prescription container in both English and Spanish the local and toll-free telephone number of the pharmacy and the statement: "Written information about this prescription has been provided for you. Please read this information before you take the medication. If you have questions concerning this prescription, a pharmacist is available during normal business hours to answer these questions at (insert the pharmacy's local and toll-free telephone numbers)."

(F) The provisions of this paragraph do not apply to patients in facilities where drugs are administered to patients by a person required to do so by the laws of the state (i.e., nursing homes).

(G) Upon delivery of a refill prescription, a pharmacist shall ensure that the patient or patient's agent is offered information about the refilled prescription and that a pharmacist is available to discuss the patient's prescription and provide information.

(H) Nothing in this subparagraph shall be construed as requiring a pharmacist to provide consultation when a patient or patient's agent refuses such consultation. The pharmacist shall document such refusal for consultation.

(4) Labeling. At the time of delivery, the dispensing container shall bear a label with the name, physical address, and phone number of the pharmacy and comply with the pharmacy or drug laws or rules in the state in which the pharmacy is located.

(c) Generic Substitution. Unless compliance would violate the pharmacy or drug laws or rules in the state in which the pharmacy is located:

(1) a pharmacist in a Class E pharmacy may dispense a generically equivalent drug product if:

(A) the generic product costs the patient less than the prescribed drug product;

(B) the patient does not refuse the substitution; and

(C) the prescribing practitioner authorizes the substitution of a generically equivalent product; or

(D) the practitioner or practitioner's agent does not clearly indicate that the oral or electronic prescription drug order shall be dispensed as ordered; and

(2) Pharmacists shall use as a basis for the determination of generic equivalency as defined in the Subchapter A, Chapter 562 of the Act, the following.

(A) For drugs listed in the publication, pharmacists shall use Approved Drug Products with Therapeutic Equivalence Evaluations (Orange Book) and current supplements published by the Federal Food and Drug Administration, within the limitations stipulated in that publication, to determine generic equivalency. Pharmacists may only substitute products that are rated therapeutically equivalent in the Orange Book and have an "A" rating. "A" rated drug products include but are not limited to, those designated AA, AB, AN, AO, AP, or AT in the Orange Book.

(B) For drugs not listed in the Orange Book, pharmacists shall use their professional judgment to determine generic equivalency.

(3) The pharmacy must include on the prescription order form completed by the patient or the patient's agent information that clearly and conspicuously:

(A) states that if a less expensive generically equivalent drug is available for the brand prescribed, the patient or the patient's agent may choose between the generically equivalent drug and the brand prescribed; and

(B) allows the patient or the patient's agent to indicate the choice of the generically equivalent drug or the brand prescribed.

(d) Therapeutic Drug Interchange. A switch to a drug providing a similar therapeutic response to the one prescribed shall not be made without prior approval of the prescribing practitioner. This sub-

section does not apply to generic substitution. For generic substitution, see the requirements of subsection (c) of this section.

(1) The patient shall be notified of the therapeutic drug interchange prior to, or upon delivery, of the dispensed prescription to the patient. Such notification shall include:

(A) a description of the change;

(B) the reason for the change;

(C) whom to notify with questions concerning the change; and

(D) instructions for return of the drug if not wanted by the patient.

(2) The pharmacy shall maintain documentation of patient notification of therapeutic drug interchange which shall include:

(A) the date of the notification;

(B) the method of notification;

(C) a description of the change; and

(D) the reason for the change.

(e) Transfer of Prescription Drug Order Information. Unless compliance would violate the pharmacy or drug laws or rules in the state in which the pharmacy is located, a pharmacist in a Class E pharmacy may not refuse to transfer prescriptions to another pharmacy that is making the transfer request on behalf of the patient.

(f) Prescriptions for Schedule II controlled substances. Unless compliance would violate the pharmacy or drug laws or rules in the state in which the pharmacy is located, a pharmacist in a Class E pharmacy who dispenses a prescription for a Schedule II controlled substance issued on a Texas Official Prescription Form shall:

(1) mail a copy of the form to the Texas Department of Public Safety, Electronic Prescription Section, P.O. Box 4087, Austin, Texas 78773 within 30 days of dispensing; or

(2) electronically send the prescription information to the Texas Department of Public Safety per their requirements for electronic submissions within 30 days of dispensing.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Gay Dodson, R.Ph.

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## CHAPTER 297. PHARMACY TECHNICIANS AND PHARMACY TECHNICIAN TRAINEES

### 22 TAC §297.7

The Texas State Board of Pharmacy adopts amendments to §297.7 concerning Exemption from Pharmacy Certification Requirements. The amendments are adopted without changes

to the proposed text as published in the March 21, 2008, issue of the *Texas Register* (33 TexReg 2469).

The amendments clarify that pharmacy technicians exempted from the certification requirements are required to register with the Board and are not exempted from registration requirements.

No comments were received.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the amendments: Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## CHAPTER 309. SUBSTITUTION OF DRUG PRODUCTS

### 22 TAC §309.3

The Texas State Board of Pharmacy adopts amendments to §309.3 concerning Generic Substitution. The amendments are adopted with changes to the proposed text published in the March 21, 2008, issue of the *Texas Register* (33 TexReg 2471) based on comments received.

The amendments implement S.B. 625 passed by the 80th Texas Legislature requiring a joint committee comprised of equal number of members from the Texas State Board of Pharmacy (TSBP) and the Texas Medical Board to make a recommendation to TSBP on whether to include a drug on the list of narrow therapeutic index (NTI) drugs as required by §562.0142. The Joint Committee met on November 19, 2007, to consider adding certain immunosuppressant drugs to the NTI list. The Joint Committee met on January 14, 2008, to consider adding certain epileptic drugs to the NTI list. The Joint Committee recommended on both occasions that no drugs be added to the NTI list. In addition, the amendments rename Chapter 309 to Substitution of Drug Products.

Comments were received from Gardere, Wynne, Sewell, LLP and the National Association of Chain Drug Stores regarding typographical errors in the rule and the preamble. An incorrect section of the Texas Pharmacy Act was referenced. The Board agrees with the comments and changed the reference to the correct section of the Texas Pharmacy Act.

The amendments are adopted under §§551.002, 554.051, and 562.014 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §562.014 as authorizing the Board in consultation with the Texas Medical Board, to establish by a rule a list of NTI drugs.

The statutes affected by the amendments: Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

#### §309.3. Generic Substitution.

##### (a) General requirements.

(1) In accordance with Chapter 562 of the Act, a pharmacist may dispense a generically equivalent drug product if:

(A) the generic product costs the patient less than the prescribed drug product;

(B) the patient does not refuse the substitution; and

(C) the practitioner does not certify on the prescription form that a specific prescribed brand is medically necessary as specified in a dispensing directive described in subsection (c) of this section.

(2) If the practitioner has prohibited substitution through a dispensing directive in compliance with subsection (c) of this section, a pharmacist shall not substitute a generically equivalent drug product unless the pharmacist obtains verbal or written authorization from the practitioner and notes such authorization on the original prescription drug order.

##### (b) Prescription format for written prescription drug orders.

(1) A written prescription drug order issued in Texas may:

(A) be on a form containing a single signature line for the practitioner; and

(B) contain the following reminder statement on the face of the prescription: "A generically equivalent drug product may be dispensed unless the practitioner hand writes the words 'Brand Necessary' or 'Brand Medically Necessary' on the face of the prescription."

(2) A pharmacist may dispense a prescription that is not issued on the form specified in paragraph (1) of this subsection, however, the pharmacist may dispense a generically equivalent drug product unless the practitioner has prohibited substitution through a dispensing directive in compliance with subsection (c)(1) of this section.

(3) The prescription format specified in paragraph (1) of this subsection does not apply to the following types of prescription drug orders:

(A) prescription drug orders issued by a practitioner in a state other than Texas;

(B) prescriptions for dangerous drugs issued by a practitioner in the United Mexican States or the Dominion of Canada; or

(C) prescription drug orders issued by practitioners practicing in a federal facility provided they are acting in the scope of their employment.

(4) In the event of multiple prescription orders appearing on one prescription form, the practitioner shall clearly identify to which prescription(s) the dispensing directive(s) apply. If the practitioner does not clearly indicate to which prescription(s) the dispensing direc-

tive(s) apply, the pharmacist may substitute on all prescriptions on the form.

(c) Dispensing directive.

(1) Written prescriptions.

(A) A practitioner may prohibit the substitution of a generically equivalent drug product for a brand name drug product by writing across the face of the written prescription, in the practitioner's own handwriting, the phrase "brand necessary" or "brand medically necessary."

(B) The dispensing directive shall:

(i) be in a format that protects confidentiality as required by the Health Insurance Portability and Accountability Act of 1996 (29 U.S.C. Section 1181 et seq.) and its subsequent amendments; and

(ii) comply with federal and state law, including rules, with regard to formatting and security requirements.

(C) The dispensing directive specified in this paragraph may not be preprinted, rubber stamped, or otherwise reproduced on the prescription form.

(D) A practitioner may prohibit substitution on a written prescription only by following the dispensing directive specified in this paragraph. Two-line prescription forms, check boxes, or other notations on an original prescription drug order which indicate "substitution instructions" are not valid methods to prohibit substitution, and a pharmacist may substitute on these types of written prescriptions.

(2) Verbal Prescriptions.

(A) If a prescription drug order is transmitted to a pharmacist orally, the practitioner or practitioner's agent shall prohibit substitution by specifying "brand necessary" or "brand medically necessary." The pharmacists shall note any substitution instructions by the practitioner or practitioner's agent, on the file copy of the prescription drug order. Such file copy may follow the one-line format indicated in subsection (b)(1) of this section, or any other format that clearly indicates the substitution instructions.

(B) If the practitioner's or practitioner's agent does not clearly indicate that the brand name is medically necessary, the pharmacist may substitute a generically equivalent drug product.

(C) To prohibit substitution on a verbal prescription reimbursed through the medical assistance program specified in 42 C.F.R., §447.331:

(i) the practitioner or the practitioner's agent shall verbally indicate that the brand is medically necessary; and

(ii) the practitioner shall mail or fax a written prescription to the pharmacy which complies with the dispensing directive for written prescriptions specified in paragraph (1) of this subsection within 30 days.

(3) Electronic prescription drug orders.

(A) To prohibit substitution, the practitioner or practitioner's agent shall note "brand necessary" or "brand medically necessary" in the electronic prescription drug order.

(B) If the practitioner or practitioner's agent does not clearly indicate in the electronic prescription drug order that the brand is medically necessary, the pharmacist may substitute a generically equivalent drug product.

(C) To prohibit substitution on an electronic prescription drug order reimbursed through the medical assistance program specified in 42 C.F.R., §447.331, the practitioner shall fax a copy of the original prescription drug order which complies with the requirements of a written prescription drug order specified in paragraph (1) of this subsection within 30 days.

(4) Prescriptions issued by out-of-state, Mexican, Canadian, or federal facility practitioners.

(A) The dispensing directive specified in this subsection does not apply to the following types of prescription drug orders:

(i) prescription drug orders issued by a practitioner in a state other than Texas;

(ii) prescriptions for dangerous drugs issued by a practitioner in the United Mexican States or the Dominion of Canada; or

(iii) prescription drug orders issued by practitioners practicing in a federal facility provided they are acting in the scope of their employment.

(B) A pharmacist may not substitute on prescription drug orders identified in subparagraph (A) of this paragraph unless the practitioner has authorized substitution on the prescription drug order. If the practitioner has not authorized substitution on the written prescription drug order, a pharmacist shall not substitute a generically equivalent drug product unless:

(i) the pharmacist obtains verbal or written authorization from the practitioner (such authorization shall be noted on the original prescription drug order); or

(ii) the pharmacist obtains written documentation regarding substitution requirements from the State Board of Pharmacy in the state, other than Texas, in which the prescription drug order was issued. The following is applicable concerning this documentation.

(I) The documentation shall state that a pharmacist may substitute on a prescription drug order issued in such other state unless the practitioner prohibits substitution on the original prescription drug order.

(II) The pharmacist shall note on the original prescription drug order the fact that documentation from such other state board of pharmacy is on file.

(III) Such documentation shall be updated yearly.

(d) Substitution of dosage form.

(1) As specified in §562.012 of the Act, a pharmacist may dispense a dosage form of a drug product different from that prescribed, such as tablets instead of capsules or liquid instead of tablets, provided:

(A) the patient consents to the dosage form substitution;

(B) the pharmacist notifies the practitioner of the dosage form substitution; and

(C) the dosage form so dispensed:

(i) contains the identical amount of the active ingredients as the dosage prescribed for the patient;

(ii) is not an enteric-coated or time release product; and

(iii) does not alter desired clinical outcomes;

(2) Substitution of dosage form may not include the substitution of a product that has been compounded by the pharmacist unless the pharmacist contacts the practitioner prior to dispensing and obtains permission to dispense the compounded product.

(e) Refills.

(1) Original substitution instructions. All refills shall follow the original substitution instructions unless otherwise indicated by the practitioner or practitioner's agent.

(2) Narrow therapeutic index drugs.

(A) The board and the Texas Medical Board shall establish a joint committee to recommend to the board a list of narrow therapeutic index drugs and the rules, if any, by which this paragraph applies to those drugs. The committee must consist of an equal number of members from each board. The committee members shall select a member of the committee to serve as presiding officer for a one year term. The presiding officer may not represent the same board as the presiding officer's predecessor.

(B) The board, on the recommendation of the joint committee, has determined that no drugs shall be included on a list of narrow therapeutic index drugs as defined in §562.014, Occupations Code.

(i) The board has specified in §309.7 of this title (relating to dispensing responsibilities) that for drugs listed in the publication, pharmacist shall use as a basis for determining generic equivalency, Approved Drug Products with Therapeutic Equivalence Evaluations and current supplements published by the Federal Food and Drug Administration, within the limitations stipulated in that publication. For drugs listed in the publications, pharmacists may only substitute products that are rated therapeutically equivalent in the Approved Drug Products with Therapeutic Equivalence Evaluations and current supplements.

(ii) Practitioners may prohibit substitution through a dispensing directive in compliance with subsection (c) of this section.

(C) The board shall reconsider the contents of the list if:

(i) the Federal Food and Drug Administration determines a new equivalence classification which indicates that certain drug products are equivalent but special notification to the patient and practitioner is required when substituting these products; or

(ii) any interested person petitions the board to reconsider the list. If the board receives a petition to include a drug on the list, the joint committee specified in subparagraph (A) of this paragraph shall review the request and make a recommendation to the board.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

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For further information, please call: (512) 305-8028



## PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

## CHAPTER 461. GENERAL RULINGS

### 22 TAC §461.1

The Texas State Board of Examiners of Psychologists adopts amendments to §461.1, References by Board Members, with no changes to the proposed text published in the February 29, 2008, issue of the *Texas Register* (33 TexReg 1719).

The amendments are being adopted to make grammatical corrections to the rule.

The adopted amendments will help to ensure protection of the public.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

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### 22 TAC §461.2

The Texas State Board of Examiners of Psychologists adopts amendments to §461.2, Unofficial Statements and/or Decisions, with no changes to the proposed text published in the February 29, 2008, issue of the *Texas Register* (33 TexReg 1720).

The amendments are being adopted to make grammatical corrections to the rule.

The adopted amendments will help to ensure protection of the public.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Sherry L. Lee  
Executive Director  
Texas State Board of Examiners of Psychologists  
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For further information, please call: (512) 305-7706



## 22 TAC §461.5

The Texas State Board of Examiners of Psychologists adopts amendments to §461.5, Contents of License, with no changes to the proposed text published in the February 29, 2008, issue of the *Texas Register* (33 TexReg 1720).

The amendments are being adopted to make grammatical corrections to the rule.

The adopted amendments will help to ensure protection of the public.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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## 22 TAC §461.6

The Texas State Board of Examiners of Psychologists adopts amendments to §461.6, File Updates, with no changes to the proposed text published in the February 29, 2008, issue of the *Texas Register* (33 TexReg 1721).

The amendments are being adopted to make grammatical corrections to the rule.

The adopted amendments will help to ensure protection of the public.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## 22 TAC §461.7

The Texas State Board of Examiners of Psychologists adopts amendments to §461.7, License Statuses, with changes to the proposed text published in the February 29, 2008, issue of the *Texas Register* (33 TexReg 1721).

The amendments are being adopted to clarify the rule.

The adopted amendments will help to ensure protection of the public.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

### §461.7. License Statuses.

(a) Active Status. Any licensee with a license on active status may practice psychology pursuant to that license. Any license that is not on inactive, delinquent, retired, resigned, void or revoked status is considered to be on active status. Active status is the only status under which a licensee may engage in the practice of psychology.

#### (b) Inactive Status.

(1) A licensee may elect inactive status by applying to the Board and paying the fee set in Board rule §473.5(b) of this title (relating to Miscellaneous Fees (Not Refundable)).

(2) Licensees who seek inactive status must return their license to the Board. A licensee may not practice psychology under an inactive license.

(3) A licensee may place his/her active license on inactive status for a period of two years. Reactivation of this license may occur at any time during this two-year period without the person having to take an exam provided that the person has notified the Board and has paid the required fees. At the end of the two-year period, if the license has not been reactivated, the license automatically becomes void. The inactive status may be extended for additional increments of two years if, prior to the end of each two-year period, the person notifies the Board in writing that an extension is requested and submits proof to the Board of continuous licensure by a psychology licensing board in this or another jurisdiction for the past two-year period and payment of all required fees. A licensee may indefinitely remain on inactive status if he/she is licensed in this or another jurisdiction and complies with the extension requirements set forth in this paragraph. Any licensee wishing to reactivate his/her license that has been on inactive status for

four years or more must take and pass the Jurisprudence Exam with the minimum acceptable score as set forth in Board rule §463.14 of this title (relating to Written Examinations) unless the licensee holds another license on active status with this Board.

(4) Any licensee who returns to active status after having been on inactive status must provide proof of compliance with Board rule §461.11 of this title (relating to Continuing Education) before re-activation will occur.

(5) A licensee with a pending complaint may not place a license on inactive status. If disciplinary action is taken against a licensee's inactive license, the licensee must reactivate the license until the action has been terminated.

(6) Inactive status may be extended for two additional years upon the Board's review and approval of medical documentation of a catastrophic medical condition of the licensee. The request for this extension must be received in writing before the end of the current inactive status period and requires payment of the \$100 inactive status fee.

(c) Delinquent Status. A licensee who fails to renew his/her license for any reason when required is considered to be on delinquent status. Any license delinquent for more than 12 consecutive months shall be void (non-payment). A licensee may not engage in the practice of psychology under a delinquent license. The Board may sanction a delinquent licensee for violations of Board rules.

(d) Restricted status. Any license that is currently suspended, on probated suspension, or is currently required to fulfill some requirements in a Board order is considered to be on restricted status. A licensee practicing under a restricted license must comply with any restrictions placed thereon by the Board.

(e) Retirement Status. A licensee who is on active or inactive status with the Board may retire by notifying the Board in writing prior to the renewal date for the license. A licensee seeking to retire after his or her renewal date must submit proof of compliance with the Board's continuing education requirement. A licensee with a pending complaint, a restricted license, or who is otherwise not in compliance with all applicable Board rules may not retire his or her license. Permission to retire will not be granted for the purpose of allowing a licensee to avoid compliance with Board rule §461.11 of this title applies, unless the licensee presents to the Board evidence of extreme medical hardship and the Board grants the request. A licensee who retires shall be reported to have retired in good standing.

(f) Resignation Status. A licensee may resign only upon express agreement by the Board. A licensee who resigns shall be reported as:

(1) Resigned in lieu of adjudication if permitted to resign while a complaint is pending;

(2) Resigned in lieu of further disciplinary action if permitted to resign while the license is subject to restriction; and

(g) Void (Non-Payment) Status. The Board may void any license that has been delinquent for 12 months or more or any inactive license that has expired. An individual may not engage in the practice of psychology under a void license. A license that has been voided may not be reinstated for any reason. A licensee whose license has been voided must submit a new application if he or she wishes to obtain a new license with the Board.

(h) Revoked Status. A license is revoked pursuant to Board Order requiring revocation as a disciplinary action.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Sherry L. Lee

Executive Director

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## 22 TAC §461.13

The Texas State Board of Examiners of Psychologists adopts amendments to §461.13, Errors, with no changes to the proposed text published in the February 29, 2008, issue of the *Texas Register* (33 TexReg 1722).

The amendments are being adopted to make grammatical corrections to the rule.

The adopted amendments will help to ensure protection of the public.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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Sherry L. Lee

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## CHAPTER 463. APPLICATIONS AND EXAMINATIONS

### 22 TAC §463.6

The Texas State Board of Examiners of Psychologists adopts amendments to §463.6, Regionally Accredited Institutions, with no changes to the proposed text published in the February 29, 2008, issue of the *Texas Register* (33 TexReg 1722).

The amendments are being adopted to make corrections to the rule.

The adopted amendments will help to ensure protection of the public.



No comments were received regarding the adoption of the amendments.

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## 22 TAC §463.8

The Texas State Board of Examiners of Psychologists adopts amendments to §463.8, Licensed Psychological Associate, with no changes to the proposed text published in the February 29, 2008, issue of the *Texas Register* (33 TexReg 1723).

The amendments are being adopted to make grammatical corrections to the rule.

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## 22 TAC §463.9

The Texas State Board of Examiners of Psychologists adopts amendments to §463.9, Licensed Specialist in School Psychol-

ogy, with changes to the proposed text published in the February 29, 2008, issue of the *Texas Register* (33 TexReg 1724).

The amendments are being adopted to clarify the requirement that LSSP interns enrolled in formal programs and LSSP trainees approved by the Board may provide psychological services in the public schools before obtaining licensure as LSSPs.

The adopted amendments will help to ensure protection of the public.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

### §463.9. *Licensed Specialist in School Psychology.*

(a) Application Requirements. A completed application for licensure as a specialist in school psychology includes the following, in addition to the requirements set forth in §463.5 of this title (relating to Application File Requirements):

(1) Documentation of an appropriate graduate degree; and

(2) Documentation from the National School Psychologists' Certification Board sent directly to the Board indicating the applicant holds current valid certification as a National Certified School Psychologist (NCSP); or

(3) Documentation of the following sent directly to the Board:

(A) transcripts that verify that the applicant has met the requirements set forth in subsection (b) of this section;

(B) proof of the internship required by subsection (c) of this section if the applicant did not graduate from either a training program approved by the National Association of School Psychologists (NASP) or a training program in school psychology accredited by the American Psychological Association (APA);

(C) the score that the applicant received on the School Psychology Examination sent directly from the Education Testing Service; and

(D) three acceptable reference letters from three different individuals who are licensed as psychologists or specialists in school psychology or are credentialed in school psychology in their respective jurisdictions.

(b) Training Qualifications. Candidates for licensure as a specialist in school psychology who hold a currently valid NCSP certification or who have graduated from a training program approved by the NASP or accredited in School Psychology by the APA will be considered to have met the training and internship qualifications. All other applicants must have completed a graduate degree in psychology from a regionally accredited academic institution, and have completed at least 60 graduate level semester credit hours, also from a regionally accredited academic institution, no more than 12 of which may be internship hours. All 60 hours do not have to be obtained prior to the conferral of the graduate degree and the applicant need not be formally enrolled in a psychology program to obtain graduate hours after the degree date. For purposes of this rule, a graduate degree in psychology means the name of the candidate's major or program of studies must be titled psychology. These applicants must submit evidence of graduate level coursework as follows:

- (1) Psychological Foundations, including:
  - (A) biological bases of behavior;
  - (B) human learning;
  - (C) social bases of behavior;
  - (D) multi-cultural bases of behavior;
  - (E) child or adolescent development;
  - (F) psychopathology or exceptionalities;
- (2) Research and Statistics;
- (3) Educational Foundations, including any of the following:
  - (A) instructional design;
  - (B) organization and operation of schools;
  - (C) classroom management; or
  - (D) educational administration;
- (4) Assessment, including:
  - (A) psychoeducational assessment;
  - (B) socio-emotional, including behavioral and cultural, assessment;
- (5) Interventions, including:
  - (A) counseling;
  - (B) behavior management;
  - (C) consultation;
- (6) Professional, Legal and Ethical Issues; and
- (7) A Practicum.

(c) Completion of internship. Applicants must have completed a minimum of 1200 hours, of which 600 must be in a public school. A formal internship or other site-based training must be provided through a formal course of supervised study from a regionally accredited institution of higher education in which the applicant was enrolled or be obtained in accordance with §463.11(c)(1) and (c)(2)(C) of this title (relating to Licensed Psychologist). The internship in the public school must be supervised by an individual qualified in accordance with §465.38 of this title (relating to Psychological Services in the Schools). Internship which is not obtained in a public school must be supervised by a licensed psychologist. No experience with a supervisor who is related within the second degree of affinity or within the second degree by consanguinity to the person, or is under Board disciplinary order, may be considered for specialist in school psychology licensure. Internships may not involve more than two sites (a school district is considered one site) and must be obtained in not less than one or more than two academic years. These individuals must be designated as interns. Direct, systematic supervision must involve a minimum of one face-to-face contact hour per week or two consecutive face-to-face contact hours once every two weeks with the intern. The internship must include direct intern application of assessment, intervention, behavior management, and consultation, for children representing a range of ages, populations and needs.

(d) Additional Requirements. In addition to the requirements of subsection (a) through (c) of this section, applicants for licensure as a specialist in school psychology must meet the requirements imposed under §501.255(a)(2) - (9) of the Psychologists' Licensing Act.

(e) Examinations. Applicants must take the National School Psychology Examination administered by the Educational Testing Service and obtain at least the current cut-off score for the NCSP before applying for the licensed specialist in school psychology. Following Board approval, an applicant for licensure as a specialist in school psychology must take and pass the Board's Jurisprudence Examination.

(f) Trainee Requirements. An applicant for the specialist in school psychology license who meets all requirements, prior to taking and passing the Jurisprudence examination, may, in accordance with §465.38(4) of this title (relating to Psychological Services in the Schools), practice under supervision as a trainee for not more than one calendar year.

(g) Provision of psychological services in the public schools by unlicensed individuals. An individual may legally provide psychological services in the public schools as an intern provided that the individual is enrolled in an internship, practicum or other site based training in a school psychology program in a regionally accredited institution of higher education. Once the individual has completed the internship required for licensure as an LSSP and is no longer enrolled in a formal program, the individual may not provide psychological services in the public schools. After the individual has passed the National School Psychology Examination, he or she must apply for licensure as an LSSP with the Board. After the Board has reviewed the LSSP application and approved the training of the applicant, the applicant will be issued an LSSP trainee status letter which allows the applicant to practice in accordance with the LSSP trainee requirements of this rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Sherry L. Lee

Executive Director

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## 22 TAC §463.10

The Texas State Board of Examiners of Psychologists adopts amendments to §463.10, Provisionally Licensed Psychologist, with changes to the proposed text published in the February 29, 2008, issue of the *Texas Register* (33 TexReg 1725).

The amendments are being adopted to make grammatical corrections to the rule.

The adopted amendments will help to ensure protection of the public.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

§463.10. *Provisionally Licensed Psychologist.*

(a) **Application Requirements.** An application for provisional licensure as a psychologist includes, in addition to the requirements set forth in Board rule §463.5 of this title (relating to Application File Requirements), an official transcript which indicates that the applicant has received a doctoral degree in psychology. Additionally, the applicant must meet the requirements of §501.255 of the Psychologists' Licensing Act.

(b) **Degree Requirements.**

(1) The applicant's transcript must state that the applicant has a doctoral degree that designates a major in psychology. Additionally, the doctoral degree must be from a regionally accredited institution.

(2) The substantial equivalence of a doctoral degree received prior to January 1, 1979, based upon a program of studies whose content is primarily psychological means a doctoral degree based on a program which meets the following criteria:

(A) Post-baccalaureate program in a regionally accredited institution of higher learning. The program must have a minimum of 90 semester hours, not more than 12 of which are credit for doctoral dissertation and not more than six of which are credit for master's thesis.

(B) The program, wherever it may be administratively housed, must be clearly identified and labeled. Such a program must specify in pertinent institutional catalogs and brochures its intent to educate and train professional psychologists.

(C) The program must stand as a recognizable, coherent organizational entity within the institution. A program may be within a larger administrative unit, e.g., department, area, or school.

(D) There must be a clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines. The program must have identifiable faculty and administrative heads who are psychologists responsible for the graduate program. Psychology faculty are individuals who are licensed or provisionally licensed or certified psychologists, or specialists of the American Board of Professional Psychology (ABPP), or hold a doctoral degree in psychology from a regionally accredited institution.

(E) The program must be an integrated, organized sequence of studies, e.g., there must be identifiable curriculum tracks wherein course sequences are outlined for students.

(F) The program must have an identifiable body of students who matriculated in the program.

(G) The program must include supervised practicum, internship, field or laboratory training appropriate to the practice of psychology. The supervised field work or internship must have been a minimum of 1,500 supervised hours, obtained in not less than a 12 month period nor more than a 24 month period. Further, this requirement cannot have been obtained in more than two placements or agencies.

(H) The curriculum shall encompass a minimum of two academic years of full-time graduate studies for those persons who have enrolled in the doctoral degree program after completing the requirements for a master's degree. The curriculum shall encompass a minimum of four academic years of full-time graduate studies for those persons who have entered a doctoral program following the completion of a baccalaureate degree and prior to the awarding of a master's degree. It is recognized that educational institutions vary in their definitions of full-time graduate studies. It is also recognized that institutions vary in their definitions of residency requirements for the doctoral degree.

(I) The following curricular requirements must be met and demonstrated through appropriate course work:

(i) Scientific and professional ethics related to the field of psychology.

(ii) Research design and methodology, statistics.

(iii) The applicant must demonstrate competence in each of the following substantive areas. The competence standard will be met by satisfactory completion at the B level of a minimum of six graduate semester hours in each of the four content areas. It is recognized that some doctoral programs have developed special competency examinations in lieu of requiring students to complete course work in all core areas. Graduates of such programs who have not completed the necessary semester hours in these core areas must submit to the Board evidence of competency in each of the four core areas.

(I) Biological basis of behavior: physiological psychology, comparative psychology, neuropsychology, sensation and perception, psycho-pharmacology.

(II) Cognitive-affective basis of behavior: Learning, thinking, motivation, emotion.

(III) Social basis of behavior: social psychology, group processes, organizational and system theory.

(IV) Individual differences: personality theory, human development, abnormal psychology.

(J) All educational programs which train persons who wish to be identified as psychologists will include course requirements in specialty areas. The applicant must demonstrate a minimum of 24 hours in his/her designated specialty area.

(3) Any person intending to apply for provisional licensure under the substantial equivalence clause must file with the Board an affidavit showing:

(A) Courses meeting each of the requirements noted in paragraph (2) of this subsection verified by official transcripts;

(B) Information regarding each of the instructors in the courses submitted as substantially equivalent;

(C) Appropriate, published information from the university awarding the degree, demonstrating that in paragraph (2)(A) - (J) of this subsection have been met.

(c) An applicant for provisional licensure as a psychologist who is accredited by Certificate of Professional Qualification in Psychology (CPQ) or the National Register or who is a specialist of ABPP will have met the following requirements for provisional licensure: submission of an official transcript which indicates the date the doctoral degree in psychology was awarded or conferred, submission of documentation of the passage of the national psychology examination at the doctoral level at the Texas cut-off score, and submission of three acceptable reference letters. All other requirements for provisional licensure must be met by these applicants. Additionally, these applicants must provide documentation sent directly from the qualifying entity to the Board office declaring that the applicant is a current member in the organization and has had no disciplinary action from any state or provincial health licensing board.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Sherry L. Lee  
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## 22 TAC §463.11

The Texas State Board of Examiners of Psychologists adopts amendments to §463.11, Licensed Psychologist, with changes to the proposed text published in the February 29, 2008, issue of the *Texas Register* (33 TexReg 1726).

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### §463.11. Licensed Psychologist.

(a) Application Requirements by Provisional Licensure. This application is provided free of charge to the applicant who has taken the Oral Examination. Upon passage of the Oral Examination, the applicant may submit the licensed psychologist application. An application for licensure as a psychologist includes, in addition to the requirements set forth in Board rule §463.5(1) of this title (relating to Application File Requirements):

(1) Documentation of current licensure as a provisionally licensed psychologist in good standing.

(2) Documentation indicating passage of the Board's Oral Examination.

(3) Documentation of two years of supervised experience from a licensed psychologist which satisfies the requirements of the Board. The formal year must be documented by the Director of Internship Training.

(4) Documentation of licensure in other jurisdictions, including information on disciplinary action and pending complaints, sent directly to the Board.

(b) Degree Requirements. The degree requirements for licensure as a psychologist are the same as for provisional licensure as stated in Board rule §463.10 of this title (relating to Provisionally Licensed Psychologist).

(c) Supervised Experience. In order to qualify for licensure, a psychologist must submit proof of two years of supervised experience, at least one year of which must have been received after the doctoral degree was officially conferred or completed, whichever is earliest, as shown on the official transcript, and at least one year of which must have been a formal internship. The formal internship year may be met either before or after the doctoral degree is conferred or completed. Supervised experience must be obtained in a minimum of two, and no more than three, calendar years, for full-time experience.

(1) General. All supervised experience for licensure as a psychologist, including the formal internship, must meet the following requirements:

(A) Experience may be obtained only in either a full-time or half-time setting.

(B) A year of full-time supervised experience is defined as a minimum of 35 hours per week employment/experience in not less than 12 consecutive calendar months in not more than two placements.

(C) A year of half-time supervised experience is defined as a minimum of 20 hours per week employment/experience in not less than 24 consecutive calendar months in not more than two placements.

(D) A year of full-time experience may be acquired through a combination of half-time and full-time employment/experience provided that the equivalent of a full-time year of supervision experience is satisfied.

(E) One calendar year from the beginning of ten consecutive months of employment/experience in an academic setting constitutes one year of experience.

(F) When supervised experience is interrupted, the Board may waive upon a showing of good cause by the supervisee, the requirement that the supervised experience be completed in consecutive months. Any consecutive experience obtained before or after the gap must be at least six months unless the supervisor remains the same. Waivers for such gaps are rarely approved and must be requested in writing and include sufficient documentation to permit verification of the circumstances supporting the request. No waiver will be granted unless the Board finds that the supervised experience for which the waiver is sought was adequate and appropriate. Good cause is defined as:

(i) unanticipated discontinuance of the supervision setting,

(ii) maternity or paternity leave of supervisee,

(iii) relocation of spouse or spousal equivalent,

(iv) serious illness of the supervisee, or serious illness in supervisee's immediate family.

(G) A rotating internship organized within a doctoral program is considered to be one placement.

(H) The experience requirement must be obtained after official enrollment in a doctoral program.

(I) All supervised experience must be received from a psychologist licensed at the time supervision is received.

(J) The supervising psychologist must be trained in the area of supervision provided to the supervisee.

(K) No experience which is obtained from a psychologist who is related within the second degree of affinity or within the second degree by consanguinity to the person may be considered.

(L) All supervised experience obtained for the purpose of licensure must be conducted in accordance with all applicable Board rules.

(M) Experience received from a psychologist while the psychologist is practicing subject to an Agreed Board Order or Board Order shall not, under any circumstances, qualify as supervised experience for licensure purposes regardless of the setting in which it was received. Psychologists who become subject to an Agreed Board Order or Board Order shall inform all supervisees of the Agreed Board

Order or Board Order and assist all supervisees in finding appropriate alternate supervision.

(N) The supervisee shall be designated by a title that clearly indicates a supervisory licensing status such as "intern," "resident," "trainee," or "fellow." An individual who is a provisionally licensed psychologist may use this title so long as those receiving psychological services are clearly informed that the individual is under the supervision of a licensed psychologist. Use of a different job title is permitted only if the supervisee is providing services for a government facility or other facility exempted under §501.004 of the Act (Applicability) and the supervisee is using a title assigned by that facility.

(O) The supervisee and supervisor must clearly inform those receiving psychological services as to the supervisory status of the individual and how the patient or client may contact the supervising licensed psychologist directly.

(2) Formal Internship. At least one year of experience must be satisfied by one of the following types of formal internship:

(A) The successful completion of an internship program accredited by the American Psychological Association (APA); or

(B) The successful completion of an organized internship meeting all of the following criteria:

(i) It must constitute an organized training program which is designed to provide the intern with a planned, programmed sequence of training experiences. The primary focus and purpose of the program must be to assure breadth and quality of training.

(ii) The internship agency must have a clearly designated staff psychologist who is responsible for the integrity and quality of the training program and who is actively licensed/certified by the licensing board of the jurisdiction in which the internship takes place and who is present at the training facility for a minimum of 20 hours a week.

(iii) The internship agency must have two or more full-time licensed psychologists on the staff as primary supervisors.

(iv) Internship supervision must be provided by a staff member of the internship agency or by an affiliate of that agency who carries clinical responsibility for the cases being supervised.

(v) The internship must provide training in a range of assessment and intervention activities conducted directly with patients/clients.

(vi) At least 25% of trainee's time must be in direct patient/client contact (minimum 375 hours).

(vii) The internship must include a minimum of two hours per week (regardless of whether the internship was completed in one year or two) of regularly scheduled formal, face-to-face individual supervision. There must also be at least two additional hours per week in learning activities such as: case conferences involving a case in which the intern was actively involved; seminars dealing with psychology issues; co-therapy with a staff person including discussion; group supervision; additional individual supervision.

(viii) Training must be post-clerkship, post-practicum and post-externship level.

(ix) The internship agency must have a minimum of two full-time equivalent interns at the internship level of training during applicant's training period.

(x) The internship agency must inform prospective interns about the goals and content of the internship, as well as the expectations for quantity and quality of trainee's work; or

(C) The successful completion of an organized internship program in a school district meeting the following criteria:

(i) The internship experience must be provided at or near the end of the formal training period.

(ii) The internship experience must occur on a full-time basis over a period of one academic year, or on a half-time basis over a period of two consecutive academic years.

(iii) The internship experience must be consistent with a written plan and must meet the specific training objectives of the program.

(iv) The internship experience must occur in a setting appropriate to the specific training objectives of the program.

(v) At least 600 clock hours of the internship experience must occur in a school setting and must provide a balanced exposure to regular and special educational programs.

(vi) The internship experience must occur under conditions of appropriate supervision. Field-based internship supervisors, for the purpose of the internship that takes place in a school setting, must be licensed as a psychologist and, if a separate credential is required to practice school psychology, must have a valid credential to provide psychology in the public schools. The portion of the internship which appropriately may take place in a non-school setting must be supervised by a psychologist.

(vii) Field-based internship supervisors must be responsible for no more than two interns at any given time. University internship supervisors shall be responsible for no more than twelve interns at any given time.

(viii) Field-based internship supervisors must provide at least two hours per week of direct supervision for each intern. University internship supervisors must maintain an ongoing relationship with field-based internship supervisors and shall provide at least one field-based contact per semester with each intern.

(ix) The internship site shall inform interns concerning the period of the internship and the training objectives of the program.

(x) The internship experience must be systematically evaluated in a manner consistent with the specific training objectives of the program.

(xi) The internship experience must be conducted in a manner consistent with the current legal-ethical standards of the profession.

(xii) The internship agency must have a minimum of two full-time equivalent interns at the internship level during the applicant's training period.

(xiii) The internship agency must have the availability of at least two full-time equivalent psychologists as primary supervisors, at least one of whom is employed full time at the agency and is a school psychologist.

(3) Industrial/Organizational Requirements. Individuals enrolled in an Industrial/Organizational doctoral degree program are exempt from the formal internship requirement and must complete two full years of supervised experience, at least one of which must be received after the doctoral degree is conferred and both of which must meet the requirements of paragraph (1) of this subsection. Individuals who do not undergo a formal internship pursuant to this paragraph should note that Board rules prohibit a psychologist from practicing in an area in which she does not have sufficient training and experience,

of which a formal internship year is considered to be an integral requirement.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

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## 22 TAC §463.14

The Texas State Board of Examiners of Psychologists adopts amendments to §463.14, Written Examinations, with no changes to the proposed text published in the February 29, 2008, issue of the *Texas Register* (33 TexReg 1729).

The amendments are being adopted to make grammatical corrections to the rule.

The adopted amendments will help to ensure protection of the public.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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## 22 TAC §463.15

The Texas State Board of Examiners of Psychologists adopts amendments to §463.15, Oral Examination, with changes to the proposed text published in the February 29, 2008, issue of the *Texas Register* (33 TexReg 1729).

The amendments are being adopted to make grammatical corrections to the rule.

The adopted amendments will help to ensure protection of the public.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

### §463.15. Oral Examination.

(a) Application Requirements. An application for the Oral Examination includes an application form, current passport picture of the applicant and required fee.

(b) Eligibility. To be eligible for licensure as a psychologist, all provisionally licensed psychologists shall be required to take and pass the Oral Examination administered by the Board. Only provisionally licensed psychologists may apply to take the Oral Examination. The Board shall waive this requirement for Specialists of the American Board of Professional Psychology, Health Service Providers listed in the National Register and for individuals who qualify for licensure under reciprocity.

(c) A candidate for the Oral Examination must demonstrate sufficient entry-level knowledge of the practice of psychology to pass the examination based on the following standards:

(1) A candidate must have a total score of 64 or above from each of the two examiners to pass the examination.

(2) Scores are based on the demonstrated abilities of the candidate in nine content areas with a possible score in each content score of 9 points for a well articulated verbal answer, 8 points for a good or passing answer, 3 points for a weak, vague or incomplete answer, and minus 10 points for an answer that is substantially incomplete or incorrect.

(3) The nine content areas are as follows:

(A) Identifies the problems (e.g. initial hypotheses, differential diagnoses, etc.);

(B) Identifies a specific and plausible strategy for gathering further data to refine the problem definition (e.g. psychometrics, observation data collection, etc.);

(C) Develops a realistic intervention or action plan on the basis of the initial formulation;

(D) Recognizes and can formulate an effective response to crises;

(E) Attends to cultural and diversity issues;

(F) Demonstrates awareness of professional limitations;

(G) Can recognize and apply laws which are relevant to the case;

(H) Can recognize and apply professional standards that are relevant; and

(I) Can recognize and apply ethical standards or ethical reasoning pertinent to the case.

(4) Each candidate is presented with a vignette, which is representative of a situation commonly encountered in the area of testing. Candidates are required to articulate a case formulation according to a standard or model that is generally recognized in their area of testing. Candidates are required to respond to questions associated with each vignette.

(5) Areas of psychology in which a candidate may choose to be tested are: clinical, counseling, school, neuropsychological, and industrial and organizational.

(d) Each candidate receives an informational brochure prior to the Oral Examination.

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## 22 TAC §463.18

The Texas State Board of Examiners of Psychologists adopts amendments to §463.18, Failing Written/Oral Examinations, with changes to the proposed text published in the February 29, 2008, issue of the *Texas Register* (33 TexReg 1730).

The amendments are being adopted to make grammatical corrections to the rule.

The adopted amendments will help to ensure protection of the public.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

### §463.18. *Failing Written/Oral Examinations.*

Applicants who fail the written examinations or the Oral Examination are permitted to take them again by paying additional examination fees. Split decisions on the Oral Examination are considered to be failures.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## 22 TAC §463.21

The Texas State Board of Examiners of Psychologists adopts amendments to §463.21, Board Members as Reviewers of

Examination, with changes to the proposed text published in the February 29, 2008, issue of the *Texas Register* (33 TexReg 1731).

The amendments are being adopted to make grammatical corrections to the rule.

The adopted amendments will help to ensure protection of the public.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

### §463.21. *Board Members as Reviewers of Examination.*

All Board members serve as reviewers of written and Oral Examination materials and procedures unless a member is matriculated in a graduate program in psychology or is related within the second degree of affinity or within the second degree of consanguinity to a person who matriculated in a graduate program in psychology.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## 22 TAC §463.24

The Texas State Board of Examiners of Psychologists adopts amendments to §463.24, Oral Examination Work Group, with changes to the proposed text published in the February 29, 2008, issue of the *Texas Register* (33 TexReg 1731).

The amendments are being adopted to make grammatical corrections to the rule.

The adopted amendments will help to ensure protection of the public.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

### §463.24. *Oral Examination Work Group.*

(a) The Board establishes a work group of Oral Examination consultants for the purpose of improving the consistency of the administration and the objectivity of the examination. Qualifications of the consultants are set by Board rule §463.23 of this title (relating to Cri-

teria for Examination Consultants). Members of the work group must be approved by the Board or its designee.

(b) The work group will include persons interested in or affected by the regulation of the practice of psychology, including faculty members of college or university psychology departments and licensees with varying levels of experience.

(c) The work group shall:

- (1) review audiotapes of passed or failed examinations;
- (2) review analyses of the performance of persons who failed the examination provided under §501.256(e) of the Act;
- (3) assess scoring criteria and clinical scenarios used in the administration of the examination;
- (4) recommend improvements to standardize the administration of the examination; and
- (5) conduct other appropriate tasks.

(6) The Chair of the Work Group will be appointed by the Board from among the consultants. The Chair will call the meetings of the consultants and direct the work group's activities.

(e) The Chair of the Board's Oral Examination Committee will serve as the Board's liaison to the Oral Examination work group. This Board member will communicate the mission, goals and tasks to the work group. This Board member will serve as a resource to the work group but will not directly participate in the evaluation of the Oral Examination. This Board member will be responsible for ensuring that the recommendations of the work group approved by the Board are implemented.

(f) The work group will report at least biennially to the Board the group's recommendations for improving the consistency of the administration and objectivity of the Oral Examination. The Board will modify the oral examination, as necessary, based on the work group's recommendations for the next administration of the Oral Examination.

(g) The first report of the work group must be submitted to the Board no later than January 2006. Necessary modifications to the Oral Examination based on the recommendations of the work group must be made to the examination by the January 2007 examination.

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## 22 TAC §463.26

The Texas State Board of Examiners of Psychologists adopts amendments to §463.26, Health Service Provider in Psychology, with changes to the proposed text published in the February 29, 2008, issue of the *Texas Register* (33 TexReg 1732).

The amendments are being adopted to make grammatical corrections to the rule.

The adopted amendments will help to ensure protection of the public.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

§463.26. *Health Service Provider in Psychology Specialty Certification.*

(a) Health Service Provider (HSP) in Psychology is a specialty certification from the Board available to Texas licensed psychologists who are listed in the National Register of Health Service Providers. The National Register defines a health service provider as one who is trained and experienced in the delivery of direct, preventive, assessment, and therapeutic intervention services to individuals whose growth, adjustment, or functioning is impaired, or to individuals who otherwise seek services. This credential does not constitute a license to practice psychology under the Act. The Board will continue to recognize all individuals who were certified as HSP by the Board prior to January 1, 1998, and who remain in good standing.

(b) Requirements for this credential as of January 1, 1998, are:

(1) Current, active licensure by the Board as a psychologist; and

(2) Documentation submitted directly to the Board from the National Register of HSP in Psychology that the applicant is currently designated as an HSP with the National Register.

(3) Active status as an HSP in psychology requires annual renewal and payment of an annual renewal fee. After one year, if the licensee fails to renew this specialty certification, it is void. To obtain specialty certification again, reapplication is required.

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## 22 TAC §463.27

The Texas State Board of Examiners of Psychologists adopts amendments to §463.27, Temporary License for Persons Licensed in Other States, with changes to the proposed text published in the February 29, 2008, issue of the *Texas Register* (33 TexReg 1732).

The amendments are being adopted to make grammatical corrections to the rule.

The adopted amendments will help to ensure protection of the public.



No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

**§463.27. Temporary License for Persons Licensed in Other States.**

(a) Temporary licensure is available to applicants for a period of not longer than 30 days from the time the application is approved until the expiration of the 30 days, provided the applicant meets the following conditions:

(1) Submission of a completed application for temporary licensure, including a brief description of the type of psychological service to be provided which is acceptable to the Board and the requested time period for the temporary license;

(2) Submission of the required fee;

(3) Submission of proof that the applicant holds current licensure to practice as a licensed psychologist or a licensed psychological associate in another state where licensing requirements are substantially equivalent to the Act and Rules of the Board;

(4) Submission of documentation directly from the state in which the applicant is currently licensed indicating that the applicant is in good standing; and

(5) The applicant provides documentation that the applicant has passed the Examination for Professional Practice in Psychology at the Texas cut-off for the type of temporary license sought.

(b) Licensed psychologists and licensed psychological associates with temporary licenses must practice in adherence to the Board rule §465.2(h) of this title (relating to Supervision), and may consult with the supervising Texas licensed psychologist.

(c) The specific period of time for which the applicant is issued a temporary license is stated in the Board's approval letter which issues the temporary license.

(d) Substantial equivalency of the other state may be documented by the applicant providing a copy of the other board's rules and regulations with pertinent sections highlighted to indicate training and exam requirements for a particular type of license. This material is then reviewed for substantial equivalency by the Board.

(e) A temporary license is not available to an applicant for permanent licensure in this state. Upon receipt of an application for a permanent license, the Board nullifies a temporary license and the individual can no longer practice legally in Texas.

(f) The holder of a temporary license will not be further notified as to the ending date of the temporary license, other than the ending date that is provided in the initial issuance letter. Practicing with an expired temporary license is illegal and may subject the individual to disciplinary review by the Board.

(g) Purposes for which a temporary license may be issued include: to serve as an expert witness in court, to assist a patient in transition to a mental health practitioner in Texas, and otherwise as approved by the Board.

(h) Applicants for temporary licenses who hold current status as Certificate of Professional Qualification in Psychology National Health Service Provider, or American Board of Professional Psychology may have documentation from the credentialing entity sent directly

to the Board as compliance with and in lieu of subsections (a)(3) and (5) of this section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## CHAPTER 465. RULES OF PRACTICE

### 22 TAC §465.3

The Texas State Board of Examiners of Psychologists adopts amendments to §465.3, Providers of Psychological Services, with no changes to the proposed text published in the February 29, 2008, issue of the *Texas Register* (33 TexReg 1734).

The amendments are being adopted to clarify the requirements for contracting for psychological services in exempt settings.

The adopted amendments will help to ensure protection of the public.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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### 22 TAC §465.16

The Texas State Board of Examiners of Psychologists adopts amendments to §465.16, Evaluation, Assessment, Testing, and Reports, with no changes to the proposed text published in the February 29, 2008, issue of the *Texas Register* (33 TexReg 1735).

The amendments are being adopted to clarify the rule.

The adopted amendments will help to ensure protection of the public.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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## 22 TAC §465.22

The Texas State Board of Examiners of Psychologists adopts amendments to §465.22, Psychological Records, Test Data and Test Protocols, with no changes to the proposed text published in the February 29, 2008, issue of the *Texas Register* (33 TexReg 1737).

The amendments are being adopted to correct grammatical and punctuation errors in this rule.

The adopted amendments will help to ensure protection of the public.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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## 22 TAC §465.37

The Texas State Board of Examiners of Psychologists adopts amendments to §465.37, Compliance with All Applicable Laws, with no changes to the proposed text published in the February 29, 2008, issue of the *Texas Register* (33 TexReg 1738).

The amendments are being adopted to identify an important state law to which licensees must adhere.

The adopted amendments will help to ensure protection of the public.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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## CHAPTER 469. COMPLAINTS AND ENFORCEMENT

### 22 TAC §469.7

The Texas State Board of Examiners of Psychologists adopts amendments to §469.7, Persons with Criminal Backgrounds, with no changes to the proposed text published in the March 28, 2008, issue of the *Texas Register* (33 TexReg 2636).

The amendments are being adopted to clarify the rule and make it concur with Chapter 53 of the Occupations Code.

The adopted amendments will help to ensure protection of the public.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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Executive Director  
Texas State Board of Examiners of Psychologists  
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## CHAPTER 470. ADMINISTRATIVE PROCEDURE

### 22 TAC §470.9

The Texas State Board of Examiners of Psychologists adopts amendments to §470.9, Witness Fees, with no changes to the proposed text published in the February 29, 2008, issue of the *Texas Register* (33 TexReg 1739).

The amendments are being adopted to make grammatical corrections to the rule.

The adopted amendments will help to ensure protection of the public.

No comments were received regarding the adoption of the amendments.

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## PART 23. TEXAS REAL ESTATE COMMISSION

### CHAPTER 543. RULES RELATING TO THE PROVISIONS OF THE TEXAS TIMESHARE ACT

#### 22 TAC §§543.2, 543.4, 543.10

The Texas Real Estate Commission (TREC) adopts amendments to §543.2, concerning Amendments, §543.4, concerning Forms, and §543.10, concerning Escrow Requirements without changes to the proposed text as published in the March 21, 2008, issue of the *Texas Register* (33 TexReg 2478) and will not be republished.

The amendments to §543.2 and §543.10 change the notice requirements for developers to notify TREC of a change in the amount of a surety bond under §221.063(a) of the Texas Timeshare Act. Currently, a developer is required to file an amendment to a registration if there is a change of more than 20% in the amount of an original surety bond. The amendments would delete that requirement to amend the registration, but a developer would be required to notify the commission of any increase or decrease in the original surety bond as provided for in §221.063(a) of the Texas Timeshare Act.

The amendment to §543.4 would adopt by reference an amended Application for Abbreviated Registration of a Timeshare Plan, Form TSR 3-2 to make the form consistent with the text in the Application to Register a Timeshare Plan, Form TSR 1-4.

The reasoned justification for the rule as adopted is efficiency and cost savings to TREC. Processing developers' written notification of changes to the amount of surety bonds will require dramatically less staff time than processing formal amendments to their timeshare registrations, while still ensuring that the information is provided to the agency.

No comments were received regarding the amendments as proposed.

The amendments are adopted under the Texas Government Code, §221.024, which authorizes the Texas Real Estate Commission to prescribe and publish forms and adopt rules necessary to carry out the provisions of The Texas Timeshare Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 19, 2008.

TRD-200802603  
Loretta R. DeHay  
General Counsel and Assistant Administrator  
Texas Real Estate Commission  
Effective date: June 8, 2008  
Proposal publication date: March 21, 2008  
For further information, please call: (512) 465-3900



## TITLE 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

#### CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

##### SUBCHAPTER A. AUTOMOBILE INSURANCE

##### DIVISION 3. MISCELLANEOUS INTERPRETATIONS

#### 28 TAC §5.207

The Commissioner of Insurance adopts new §5.207, concerning a new Financial Responsibility Consumer Outreach Program.

The new section is adopted without changes to the proposed text published in the April 4, 2008, issue of the *Texas Register* (33 TexReg 2775).

**REASONED JUSTIFICATION.** This new section is necessary to implement the provisions of §601.072 of the Transportation Code, enacted by SB 502, 80th Legislature, Regular Session, effective September 1, 2007. Section 601.072(c) requires the Department to establish an outreach program to inform persons of the requirements of the Texas Motor Vehicle Safety Responsibility Act (Act) (Transportation Code Chapter 601) and the ability to comply with the financial responsibility requirements of the Act through motor vehicle liability insurance coverage. Section 601.072(c) also requires the Commissioner of Insurance to establish the requirements for the outreach program by rule. The adopted new section establishes the requirements for the Financial Responsibility Consumer Outreach Program (Program).

Section 601.072(c) specifies that the outreach program must be designed to encourage compliance with the financial responsibility requirements of the Act and must be made available in English and Spanish. The adopted new section requires the Department to develop and periodically update Program materials that are designed to encourage compliance with the financial responsibility requirements. The new section also requires that the materials be made available in English and Spanish.

**HOW THE SECTION WILL FUNCTION.** Adopted §5.207(a) states the purpose of the section, which is to establish the requirements for the Financial Responsibility Consumer Outreach Program (Program). Adopted §5.207(b) - (e) establish the requirements for the Program. Adopted §5.207(c) requires the Department to develop and periodically update Program materials that are designed to encourage compliance with the financial responsibility requirements. Adopted §5.207(d) requires the materials to include information on minimum coverage amounts required to establish financial responsibility under the Act and the ability to comply with the Act by providing information on how to comply with the Act through motor vehicle liability insurance coverage and how to obtain motor vehicle liability insurance coverage. Adopted §5.207(e) provides that the materials may be in the form of publications, brochures, and fliers and requires that the materials be made available in English and Spanish. Adopted §5.207(e) also requires that the materials be made available on the Department's website and that they may also be distributed by other means. Under adopted §5.207(f), the Department may also provide press releases and educational sessions. Under adopted §5.207(g), the materials may be incorporated into existing Department consumer outreach programs and program materials.

**SUMMARY OF COMMENTS AND AGENCY'S RESPONSE.** The Department did not receive any comments on the proposed new section.

**STATUTORY AUTHORITY.** The section is adopted pursuant to the Transportation Code §601.072(c) and the Insurance Code §36.001. The Transportation Code §601.072(c) requires the Commissioner of Insurance to establish the requirements for an outreach program by rule to inform persons of the requirements of Chapter 601 of the Transportation Code (Texas Motor Vehicle Safety Responsibility Act) and the ability to comply with the financial responsibility requirements of Chapter 601 through motor vehicle liability insurance coverage. The Insurance Code §36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the

powers and duties of the Department under the Insurance Code and other laws of this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 14, 2008.

TRD-200802515

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Effective date: June 3, 2008

Proposal publication date: April 4, 2008

For further information, please call: (512) 463-6327

## **TITLE 31. NATURAL RESOURCES AND CONSERVATION**

### **PART 10. TEXAS WATER DEVELOPMENT BOARD**

#### **CHAPTER 363. FINANCIAL ASSISTANCE PROGRAMS**

##### **SUBCHAPTER A. GENERAL PROVISIONS**

The Texas Water Development Board (Board) adopts amendments to §363.15, regarding Required Water Conservation Plan, and §363.71, regarding General Responsibilities, with changes to the proposed text as published in the April 11, 2008, issue of the *Texas Register* (33 TexReg 2905).

These rules concern water conservation plans, which are required for certain water rights permit applicants or holders of water rights permits under Texas Water Code (Water Code) §11.1271 regarding Additional Requirements: Water Conservation Plans; for certain retail public utilities under Water Code §13.146 regarding Water Conservation Plan; and for applicants for the Board's financial programs, under Water Code §15.103 regarding Application for Assistance, §15.106 regarding Approval of Application, §15.208 regarding Approval of Application, §15.607 regarding Approval of Application, §15.735 regarding Application Submission and Approval, §15.910 regarding Application for Assistance, §15.975 regarding Approval of Applications, §15.995 regarding Financial Assistance, §17.122 regarding Application for Assistance, §17.125 regarding Approval of Application, §17.274 regarding Application for Assistance, §17.277 regarding Approval of Application, and §17.857 regarding Approval of Application.

These rule adoptions incorporate changes required by Senate Bill 3 and House Bill 4 passed by the 80th Texas Legislature in 2007. In these bills, the 80th Legislature created new Water Code provisions related to water conservation plans, including Water Code §16.402, which requires that the Board and the Texas Commission on Environmental Quality (TCEQ) jointly adopt rules to identify the minimum requirements and submission deadlines for annual reports required by Water Code §16.402(b), and to provide for enforcement of §16.402 and rules adopted under §16.402. To comply with this requirement, the TCEQ adopted a rulemaking as published in the January 4, 2008, issue of the *Texas Register* (33 TexReg 193).

No comments were received regarding adoption of the proposed amendments. A non-substantive change was made to §363.15(d) by adding the citation Water Code §15.208(d) to the citation string at the beginning of subsection (d). A non-substantive change was made to the section title of §363.71 changing the word "Requirements" to "Responsibilities".

## **DIVISION 2. GENERAL APPLICATION PROCEDURES**

### **31 TAC §363.15**

This adoption is authorized pursuant to Water Code §6.101, which authorizes the Board to adopt rules necessary to carry out the powers and duties of the Board; §§15.103, 15.105, 15.204, 15.603 - 15.605, 15.737, 15.909, 15.977, 17.122, 17.125, 17.274, 17.277, and 17.857, which authorize the Board to prescribe in its rules water conservation plan requirements for applicants for financial assistance; §16.402(e), which requires that the Board and the TCEQ jointly adopt rules identifying the minimum requirement and submission deadlines for the annual reports required by that statute, and providing for enforcement of that statute and rules adopted under it.

#### *§363.15. Required Water Conservation Plan.*

(a) An applicant, if not eligible for an exemption under subsection (c) of this section, shall submit, with its application, two copies of its water conservation plan for approval. The executive administrator shall review all water conservation plans submitted as part of an application for financial assistance for a project and shall determine if the plans meet the requirements of this section.

(b) The water conservation plan required under subsection (a) of this section must be new or revised to include five-year and ten-year targets for water savings, unless the applicant has, since May 1, 2005, implemented an approved water conservation plan that meets the requirements of this section, and that has been in effect for less than five years. The water conservation plan shall include an evaluation of the applicant's water and wastewater system and customer water use characteristics to identify water conservation opportunities and shall set goals to be accomplished by water conservation measures. The water conservation plan shall provide information in response to the following minimum requirements. If the plan does not provide information for each minimum requirement, the applicant shall include in the plan an explanation of why the requirement is not applicable.

(1) Minimum requirements. Water conservation plans shall include the following elements:

(A) a utility profile including, but not limited to, information regarding population and customer data, water use data, water supply system data, and wastewater system data;

(B) specific, quantified five-year and ten-year targets for water savings to include goals for water loss programs in gallons per capita per day, and goals for municipal use, in gallons per capita per day;

(C) a schedule for implementing the plan to achieve the applicant's targets and goals;

(D) a method for tracking the implementation and effectiveness of the plan;

(E) a master meter to measure and account for the amount of water diverted from the source of supply;

(F) a program for universal metering of both customer and public uses of water, for meter testing and repair, and for periodic meter replacement;

(G) measures to determine and control water loss (for example, periodic visual inspections along distribution lines; annual or monthly audit of the water system to determine illegal connections, abandoned services, etc.);

(H) a program of leak detection, repair, and water loss accounting for the water transmission, delivery, and distribution system;

(I) a program of continuing public education and information regarding water conservation;

(J) a water rate structure which is not "promotional," i.e., a rate structure which is cost-based and which does not encourage the excessive use of water;

(K) a means of implementation and enforcement which shall be evidenced by:

(i) a copy of the ordinance, resolution, or tariff indicating official adoption of the water conservation plan by the applicant; and

(ii) a description of the authority by which the applicant will implement and enforce the conservation plan;

(L) documentation that the regional water planning groups for the service area of the applicant have been notified of the applicant's water conservation plan; and

(M) a current drought contingency plan which includes specific water supply or water demand management measures and, at a minimum, includes, trigger conditions, demand management measures, initiation and termination procedures, a means of implementation, and measures to educate and inform the public regarding the drought contingency plan.

(2) Additional conservation strategies. The water conservation plan may also include any other water conservation practice, method, or technique that the applicant deems appropriate.

(c) Pursuant to Water Code §§15.106(c) 17.125(c), 17.277(c), and 17.857(c), an applicant is not required to provide a water conservation plan if the board determines an emergency exists; the amount of financial assistance to be provided is \$500,000 or less; or the board finds that implementation of a water conservation program is not reasonably necessary to facilitate water conservation; or the application is for flood control purposes under Water Code, Chapter 17, Subchapter G.

(1) An emergency exists when:

(A) a public water system or wastewater system has already failed, or is in a condition which poses an imminent threat of failure, causing the health and safety of the citizens served to be endangered;

(B) sudden, unforeseen demands are placed on a water system or wastewater system (i.e., because of military operations or emergency population relocation);

(C) a disaster has been declared by the governor or president; or

(D) the governor's Division of Emergency Management of the Texas Department of Public Safety has determined that an emergency exists.

(2) If the board determines that an emergency exists and commits to financial assistance without requiring a water conservation plan, the applicant must report whether the emergency continues to exist every six months after the board commits to financial assistance. If

the Executive Administrator finds that the emergency no longer exists, the applicant must submit a water conservation plan within six months of the finding.

(d) Pursuant to Water Code §§15.106(d)(e), 15.208(d), 17.125(e), 17.277(e), and 17.857(e), if the applicant will utilize the project financed by the board to furnish water or wastewater services to another entity that in turn will furnish the water or wastewater services to the ultimate consumer, the applicant shall:

(1) submit its own water conservation plan before closing on the financial assistance; and

(2) submit the other entity's water conservation plan, if one exists, before closing on the financial assistance; and

(3) require, by contract, that the other entity adopt a water conservation plan that conforms to the board's requirements and submit it to the board. If the requirement is to be included in an existing water or wastewater service contract, it may be included, at the earliest of the renewal or substantial amendment of that contract, or by other appropriate measures.

(e) The board will accept a water conservation plan determined by the commission to satisfy the requirements of 30 TAC Chapter 288 for purposes of meeting the minimum requirements of subsection (b) of this section.

(f) Water conservation plans that are submitted to the TCEQ and copied to the board under Water Code §16.402 must contain the applicable minimum requirements for water conservation plans established by the Commission in its rules at 30 TAC Chapter 288.

(g) Annual reports.

(1) Each entity that is required to submit a water conservation plan to the board or the commission, other than a recipient of financial assistance from the board, shall file a report not later than May 1, 2010, and annually thereafter to the executive administrator on the entity's progress in implementing each of the minimum requirements in the water conservation plan.

(2) Recipients of financial assistance from the board shall maintain an approved water conservation plan in effect until all financial obligations to the state have been discharged and shall file a report with the executive administrator on the applicant's progress in implementing each of the minimum requirements in its water conservation plan and the status of any of its customers' water conservation plans required by contract, within one year after closing on the financial assistance and annually thereafter until all financial obligations to the state have been discharged.

(3) Annual reports prepared for the Commission providing the information required by this subsection may be provided to the board to fulfill the board's reporting requirements.

(h) The following are violations of board rules for purposes of Water Code §16.402:

(1) failure to submit a water conservation plan containing the minimum requirements in subsections (b) and (f) of this section; and

(2) failure to timely submit a complete annual report on the entity's progress in implementing its plan that addresses each element in its water conservation plan, as required by Water Code §16.402 and subsection (g) of this section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 12, 2008.

TRD-200802469

Ingrid K. Hansen

Acting General Counsel

Texas Water Development Board

Effective date: June 1, 2008

Proposal publication date: April 11, 2008

For further information, please call: (512) 463-8061



## DIVISION 6. POST-CONSTRUCTION RESPONSIBILITIES

### 31 TAC §363.71

This adoption is authorized pursuant to Water Code §6.101, which authorizes the Board to adopt rules necessary to carry out the powers and duties of the Board; §§15.103, 15.105, 15.204, 15.603 - 15.605, 15.737, 15.909, 15.977, 17.122, 17.125, 17.274, 17.277, and 17.857, which authorize the Board to prescribe in its rules water conservation plan requirements for applicants for financial assistance; §16.402(e), which requires that the Board and the TCEQ jointly adopt rules identifying the minimum requirement and submission deadlines for the annual reports required by that statute, and providing for enforcement of that statute and rules adopted under it.

§363.71. *General Responsibilities.*

(a) After the satisfactory completion of the project, the political subdivision shall be held responsible by the board for the continued compliance with all representations and assurances made to the board. To protect the state's monetary investment and the public interest, the executive administrator is authorized to inspect the project and review operational and financial records. Certified copies of all documents relating to the operation of the project and compliance with agreements relating to board financial assistance shall be provided as requested.

(b) Should any information obtained by the executive administrator indicate noncompliance with any agreements, the executive administrator shall require the political subdivision to take timely corrective action. Failure to correct problems may be cause for referral to the attorney general.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Ingrid K. Hansen

Acting General Counsel

Texas Water Development Board

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For further information, please call: (512) 463-8061



## CHAPTER 379. ADVISORY COMMITTEES

### 31 TAC §§379.1 - 379.3

The Texas Water Development Board (Board) adopts the repeal of §§379.1 - 379.3, relating to Advisory Committees, with-

out changes to the proposed repeal as published in the April 11, 2008, issue of the *Texas Register* (33 TexReg 2909).

No comments were received regarding the proposed repeal.

The repeals are adopted under the authority of the Texas Water Code §6.101, which provides the board with the authority to adopt rules necessary to carry out the powers and duties of the board.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Ingrid K. Hansen

Acting General Counsel

Texas Water Development Board

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For further information, please call: (512) 463-8061

## **TITLE 34. PUBLIC FINANCE**

### **PART 1. COMPTROLLER OF PUBLIC ACCOUNTS**

#### **CHAPTER 3. TAX ADMINISTRATION**

##### **SUBCHAPTER L. MOTOR FUEL TAX--PRIOR TO JANUARY 1, 2004**

###### **34 TAC §§3.171 - 3.178, 3.180, 3.182 - 3.185, 3.187, 3.189, 3.190, 3.193, 3.195, 3.196, 3.200, 3.202, 3.203**

The Comptroller of Public Accounts adopts repeal of Subchapter L, §§3.171 - 3.178, 3.180, 3.182 - 3.185, 3.187, 3.189, 3.190, 3.193, 3.195, 3.196, 3.200, 3.202, and 3.203, without changes to the proposed text as published in the April 4, 2008, issue of the *Texas Register* (33 TexReg 2805). House Bill 2458, 78th Legislature, 2003, provided for the repeal of Tax Code, Chapter 153, and added Tax Code, Chapter 162, to replace the repealed chapter beginning January 1, 2004.

The sections are being repealed because the four year statute of limitations for filing amendments to tax returns under Chapter 153 has expired. Texas Administrative Code, Title 34, Part 1, Chapter 3, Subchapter S, provide the rules necessary for the administration, collection and enforcement of motor fuel taxes under Chapter 162.

No comments were received regarding adoption of the repeal.

The repeals are adopted under Tax Code, §111.102, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The repeals implement House Bill 2458, 78th Legislature, 2003.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 15, 2008.

TRD-200802532

Martin Cherry

General Counsel

Comptroller of Public Accounts

Effective date: June 4, 2008

Proposal publication date: April 4, 2008

For further information, please call: (512) 475-0387

## **PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS**

### **CHAPTER 31. EMPLOYMENT AFTER RETIREMENT**

#### **SUBCHAPTER D. EMPLOYER PENSION SURCHARGE**

##### **34 TAC §31.41**

The Board of Trustees (Board) of the Teacher Retirement System of Texas (TRS) adopts amended §31.41, concerning the return to work employer pension surcharge, without changes to the proposed text as published in the March 7, 2008, issue of the *Texas Register* (33 TexReg 2007) and will not be republished.

In 2005, the Texas Legislature enacted a penalty or surcharge to be paid by TRS-covered employers who employed retirees. The pension surcharge is an amount equal to the member and state contribution rate on compensation paid to the retiree. Under the 2005 legislation, the pension surcharge was not owed on retirees who were reported by the TRS-covered employer as working in January 2005. TRS adopted rules to clarify that the pension surcharge was only owed on retirees working in TRS-covered positions. In addition to the exemption for retirees reported as working in January 2005, the surcharge was also not owed on retirees working less than one-half time, as substitutes, or in temporary positions. Experience with this amendment resulted in further legislative changes in 2007. Senate Bill 1846 (80th Legislature, Regular Session, 2007) exempts employers from paying the pension surcharge for the employment of retirees who retired before September 1, 2005.

Amended §31.41 reflects these recent legislative changes and preserves the former requirements for historical purposes when TRS must make adjustments or correct errors. The amended section clarifies that the former requirements regarding the payment of a pension surcharge applied to the 2005-2006 and 2006-2007 school years. The amended section further clarifies that, beginning with the 2007-2008 school year, the pension surcharge is not owed on the employment of a retiree who retired before September 1, 2005.

No comments were received regarding the adoption of the amendments.

Statutory Authority: The amended section is adopted under §825.102, Government Code, which authorizes the Board to adopt rules for the administration of the funds of the retirement system.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 19, 2008.  
TRD-200802604  
Ronnie G. Jung  
Executive Director  
Teacher Retirement System of Texas  
Effective date: June 8, 2008  
Proposal publication date: March 7, 2008  
For further information, please call: (512) 542-6438

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## CHAPTER 41. HEALTH CARE AND INSURANCE PROGRAMS

### SUBCHAPTER A. RETIREE HEALTH CARE BENEFITS (TRS-CARE)

#### 34 TAC §41.4

The Board of Trustees (Board) of the Teacher Retirement System of Texas (TRS) adopts amended §41.4, concerning the employer health benefit surcharge, with changes to the proposed text as published in the March 7, 2008, issue of the *Texas Register* (33 TexReg 2009).

Section 41.4 implements the statutory health benefit surcharge owed by a TRS covered employer for each month that the employer reports that a retiree enrolled in TRS-Care is working in a TRS-covered position. In accordance with the initial legislation regarding the surcharge and before the instant rule amendments, the section provided that the surcharge was not owed by a particular employer on retirees enrolled in TRS-Care who were reported working by that employer for the report month of January 2005.

Provisions of Senate Bill 1846, 80th Legislature, Regular Session (2007) (S.B. 1846) expands the scope of exempted retirees. S.B. 1846 provides that, beginning with school year 2007-2008, the health benefit surcharge is not owed with regard to any retiree who retired from TRS before September 1, 2005. The adopted rule amendments address the provisions of S.B. 1846.

The rule amendments provide that previously adopted exceptions to payment of the surcharge apply only to the 2005-2006 and 2006-2007 school years. Contained in subsection (g) of the rule, those exceptions provide that the surcharge is not owed for the following--retirees reported by employers for the report month of January 2005, including those reported by an employer that consolidated with another district on or before September 1, 2005; and retirees reported working as substitutes as long as the substitute service was not combined with other TRS-covered employment in the same month. As amended, subsection (g) thus maintains the status quo under then existing law for school years 2005-2006 and 2006-2007.

Applying to the 2007-2008 school year and thereafter, new subsection (h) of amended §41.4 states that the surcharge is not owed by an employer for any retiree employed by that employer who retired from TRS before September 1, 2005. The adopted amendments also either remove unnecessary language or clarify the section.

In subsection (h)(2) of the amended section, changes are made to the text of the proposed rule as published in the *Texas Register*. Those changes delete language about reported compensation that relates only to the return to work employer *pension* surcharge, a different additional sum assessed un-

der 34 TAC §31.41 against employers hiring certain retirees. (Adopted amendments to §31.41 are published elsewhere in this issue.) The changes to §41.4 do not require republication of the proposed rule.

No comments were received regarding the adoption of the amendments.

**Statutory Authority:** The amended section is adopted under §825.102, Government Code, which authorizes the Board to adopt rules for the administration of the funds of the retirement system; and §1575.052, Insurance Code, which authorizes TRS as trustee for TRS-Care to adopt rules reasonably necessary to implement minimum financing standards for group coverage for TRS-Care participants, procedures for contributions and deductions, and procedures to administer the retired school employees group insurance fund.

#### *§41.4. Employer Health Benefit Surcharge.*

(a) When used in this section, the term "employer" has the meaning given in §821.001(7), Government Code.

(b) A retiree who is enrolled in the health benefits program ("TRS-Care") provided pursuant to the Texas Public School Retired Employees Group Benefits Act, is working in a TRS-covered position, and is reported on the Employment of Retired Members Report to the Teacher Retirement System of Texas ("TRS") shall submit the TRS-Care Employer Health Benefit Surcharge Information Form, promulgated by TRS, to the employer, providing details of the retiree's TRS-Care coverage tier, years of service credit, and category of enrollment, as well as the identification of all employers of the retiree and all employers of any other retiree enrolled under the same account identification number, as required by the form. The criteria used to determine if the retiree is working in a TRS-covered position are the same as the criteria for determining employment eligible for TRS membership.

(c) The retiree must submit to the employer an updated Employer Health Benefit Surcharge form when changes occur in coverage or the employment status of any retiree or other individual enrolled under the same account identification number.

(d) For each report month a retiree is enrolled in TRS-Care, is working in a TRS-covered position, and is reported on the Employment of Retired Members Report, the employer that reports the retiree shall, using the information provided by the retiree to the employer on the Employer Health Benefit Surcharge form, pay monthly to the Retired School Employees Group Insurance Fund (the "Fund") a surcharge amount that is derived by taking the difference, if any, between:

(1) the monthly full cost, as set by the trustee, for all individuals (including a spouse and children, if any) enrolled under the same account identification number; and

(2) the monthly total premium, as set by the trustee, for all individuals (including a spouse and children, if any) enrolled under the same account identification number.

(e) The surcharge is also owed by the employer on any retiree who is enrolled in TRS-Care, is working for a third party entity but is serving in a TRS-covered position, and who is considered an employee of that employer under §824.601(d) of the Government Code.

(f) The surcharge under subsection (d) of this section is due from each employer that reports a retiree as working in a TRS-covered position on or after September 1, 2005, beginning with the report month for September 2005.

(g) For the 2005-2006 and 2006-2007 school years, the surcharge under subsection (d) of this section is not owed:



(1) by an employer for any retiree reported by that employer on the Employment of Retired Members Report for the report month of January 2005;

(2) by an employer for any retiree reported by a second employer on the Employment of Retired Members Report for the report month of January 2005, if both employers are school districts that consolidate into a consolidated school district on or before September 1, 2005; or

(3) by an employer for a retiree reported as working under the exception for Substitute Service as provided in §31.13 of this title unless that retiree combines Substitute Service under §31.13 of this title with other TRS-covered employment in the same calendar month. For each calendar month that the retiree combines substitute service and other TRS-covered employment, the surcharge is owed by the employer that reports the retiree on all compensation earned by the retiree, including compensation for the substitute service.

(h) Beginning with the 2007-2008 school year, the surcharge under subsection (d) of this section is not owed:

(1) by an employer for any retiree employed by that employer who retired from TRS before September 1, 2005; or

(2) by an employer for a retiree reported as working under the exception for Substitute Service as provided in §31.13 of this title unless that retiree combines Substitute Service under §31.13 of this title with other TRS-covered employment in the same calendar month. For each calendar month that the retiree combines substitute service and other TRS-covered employment, the surcharge is owed by each employer as provided in this section.

(i) An employer who reports to TRS the employment of a retiree who is enrolled in TRS-Care and is working in a TRS-covered position shall inform TRS as soon as possible in writing of the name, address, and telephone number of any other employer that employs the retiree or any other retiree who is also enrolled under the same account identification number.

(j) If more than one employer reports the employment of a retiree who is enrolled in TRS-Care to TRS during any part of a month, the surcharge under subsection (d) of this section required to be paid into the Fund by each reporting employer for that month is the total amount of the surcharge due that month divided by the number of reporting employers. The pro rata share owed by each employer is not based on the number of hours respectively worked each week by the retiree for each employer, nor is it based on the number of days respectively worked during the month by the retiree for each employer.

(k) If a retiree who is enrolled in TRS-Care is employed concurrently in more than one position that is not eligible for TRS membership, the surcharge is owed if the combined employment is eligible for membership under §25.6 of this title. If the employment is with more than one employer, the surcharge will be paid according to subsection (j) of this section by each employer.

(l) If a retiree who is enrolled in TRS-Care is employed concurrently in more than one position and one of the positions is eligible for TRS membership and one is not, the surcharge is owed on the combined employment. If the employment is with more than one employer, the surcharge will be paid according to subsection (j) of this section by each employer.

(m) If a retiree who is enrolled in TRS-Care is employed in a position eligible for TRS membership, the surcharge will be paid according to subsection (j) of this section by each employer on all subsequent employment, whether eligible for membership or not, with a TRS-covered employer for the same school year.

(n) Notwithstanding subsections (a) - (m) of this section, for the 2005-2006 school year only, a retiree

(1) who retired before September 1, 2005,

(2) who is enrolled in TRS-Care, and

(3) who is employed for a period of more than four and one-half months due to the enrollment of students displaced by Hurricane Katrina may be considered a temporary employee whose employment is not subject to the surcharge under this section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 19, 2008.

TRD-200802605

Ronnie G. Jung

Executive Director

Teacher Retirement System of Texas

Effective date: June 8, 2008

Proposal publication date: March 7, 2008

For further information, please call: (512) 542-6438



## PART 4. EMPLOYEES RETIREMENT SYSTEM OF TEXAS

### CHAPTER 81. INSURANCE

#### 34 TAC §§81.1, 81.3, 81.7, 81.8

The Employees Retirement System of Texas ("ERS") adopts amendments to 34 Texas Administrative Code (TAC) §§81.1, 81.3, 81.7, and 81.8 concerning Insurance without changes to the proposed text as published in the April 4, 2008, issue of the *Texas Register* (33 TexReg 2806), and will not be republished.

Recent Federal legislation was enacted to prohibit health plans from offering incentives which may encourage members to drop health coverage in favor of TRICARE and TRICARE Supplement plans. These sections are amended to update the rules to delete references to TRICARE or TRICARE Supplement as ERS is not participating in or implementing this program.

Sections 81.1, 81.3, 81.7, and 81.8, concerning Definitions, Administration, Enrollment and Participation, and Waiver of Health Coverage are amended to delete references to TRICARE and TRICARE Supplement.

No comments were received on the proposed amendments.

The amendments are adopted under the Texas Insurance Code, §1551.052 which provides authorization for the ERS Board of Trustees to adopt rules necessary to carry out its statutory duties and responsibilities.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 16, 2008.

TRD-200802543

Paula A. Jones  
General Counsel  
Employees Retirement System of Texas  
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Proposal publication date: April 4, 2008  
For further information, please call: (512) 867-7288



## **TITLE 37. PUBLIC SAFETY AND CORRECTIONS**

### **PART 5. TEXAS BOARD OF PARDONS AND PAROLES**

#### **CHAPTER 141. GENERAL PROVISIONS SUBCHAPTER C. SUBMISSION AND PRESENTATION OF INFORMATION AND REPRESENTATION OF OFFENDERS**

##### **37 TAC §141.61**

The Texas Board of Pardons and Paroles adopts an amendment to 37 TAC §141.61, concerning representation of an offender. The amendment is adopted without change to the proposed text as published in the March 14, 2008, issue of the *Texas Register* (33 TexReg 2267). The text of the rule will not be republished.

The amended rule is adopted for the purpose of clarifying the language of the rule.

No public comment was received regarding adoption of the amendment.

The amended rule is adopted under §508.082 and §508.083, Government Code. Section 508.082 requires the board to adopt rules relating to the submission and presentation of information and arguments to the board, a parole panel, and the department for and in behalf of an inmate. Section 508.083 relates to representation of an inmate in a matter before the board or a parole panel.

No other statutes, articles, or codes are affected by the amended rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 19, 2008.

TRD-200802589  
Bettie Wells  
General Counsel  
Texas Board of Pardons and Paroles  
Effective date: June 8, 2008  
Proposal publication date: March 14, 2008  
For further information, please call: (512) 406-5388



#### **CHAPTER 145. PAROLE SUBCHAPTER A. PAROLE PROCESS**

##### **37 TAC §145.15**

The Texas Board of Pardons and Paroles adopts an amendment to 37 TAC §145.15, concerning action upon review; extraordinary vote. The amendment is adopted with one change to the proposed text as published in the March 14, 2008, issue of the *Texas Register* (33 TexReg 2268). The text of the rule will be republished.

The amended rule is adopted for the purposes of adding new language to establish a voting option for placement of offenders into the Sex Offender Education Program (SOEP) or the Sex Offender Treatment Program (SOTP). One non-substantive change was made in §145.15(a), §21.02 was added to the current language.

No public comment was received regarding adoption of the amendment.

The amendment is adopted under §508.036, Government Code, which provides the board with the authority to promulgate rules relating to the board's decision-making processes, and §508.044, Government Code, providing the board with the authority to adopt rules relating to the eligibility of an inmate for release on parole or mandatory supervision.

No other statutes, articles, or codes are affected by the amendment.

##### *§145.15. Action Upon Review; Extraordinary Vote.*

(a) This section applies to any offender convicted of a capital offense under §§21.02, 21.11(a)(1) or 22.021, Penal Code, or who is required under §508.145(c), Government Code, to serve 35 calendar years before becoming eligible for parole review. All members of the board shall vote on the release of an eligible offender. At least two-thirds of the members must vote favorably for the offender to be released to parole. Members of the board shall not vote until they receive and review a copy of a written report from the department on the probability of the offender committing an offense after being released.

(1) Upon review, use of the full range of voting options is not conducive to determining whether two-thirds of the board considers the offender ready for release to parole.

(2) If it is determined that circumstances favor the offender's release to parole the board has the following voting options available:

(A) FI-1: Release the offender when eligible; or

(B) FI-4R (Month/Year): Transfer to a TDCJ rehabilitation program. Release to parole only after program completion and not earlier than four months from specified date. Such TDCJ program shall be either the Sex Offender Education Program (SOEP) or the Sex Offender Treatment Program (SOTP).

(C) FI-18 R (Month/Year): Transfer to a TDCJ rehabilitation treatment program. Release to parole only after program completion and no earlier than eighteen months from the specified date. Such TDCJ program may include the Sex Offender Treatment Program (SOTP). In no event shall the specified date be set more than three years from the current panel decision date.

(3) If it is determined that circumstances do not support a favorable action upon review, the following options are available:

(A) NR (Month/Year): Deny release and set the next review date for 36 months following the panel decision date; or

(B) SA: The offender's minimum or maximum expiration date is less than 36 months away. The offender will continue to serve their sentence until that date.

(b) If the offender is sentenced to serve consecutive sentences and each sentence in the series is for an offense committed on or after September 1, 1987, the following voting options are available to the board panel:

(1) CU/FI (Month/Year-Cause Number): A favorable parole action that designates the date an offender would have been released if the offender had been sentenced to serve a single sentence;

(2) CU/NR (Month/Year-Cause Number): Deny release and set the next review date for 36 months following the panel decision date; or

(3) CU/SA (Month/Year-Cause Number): Deny release and order serve-all if the offender is within 36 months of their maximum expiration date.

(c) Some offenders are eligible for consideration for release to Discretionary Mandatory Supervision if the sentence is for an offense committed on or after September 1, 1996. Prior to the offender reaching the projected release date, the voting options are the same as those listed in subsections (a) and (b) of this section. If TDCJ-CID determines that release of the offender will occur because the offender will reach the projected release date, the case shall be referred to a three-member parole panel within 30 days of the offender's projected release date for consideration for release to mandatory supervision using the following options:

(1) RMS: Release to mandatory supervision; or

(2) DMS (Month/Year): Deny release to mandatory supervision and set for review on a future specific month and year. The next mandatory supervision review date shall be set one year from the panel decision date.

(d) Upon review of any eligible offender who qualifies for release to Medically Recommended Intensive Supervision (MRIS), the MRIS panel shall initially vote to either recommend or deny MRIS consideration. The MRIS panel shall base this decision on the offender's medical condition and medical evaluation, and shall determine whether the offender constitutes a threat to public safety.

(1) If the MRIS panel determines the offender does constitute a threat to public safety, no further voting is required.

(2) If the MRIS panel determines that the offender does not constitute a threat to public safety, the case shall be sent to the full board, which shall determine whether to approve or deny the offender's release to parole. The following voting options are available to the board:

(A) Approve MRIS: The board shall vote FI-1 and impose special condition "O"-"The offender shall comply with the terms and conditions of the MRIS program and abide by a Texas Correctional Office for Offenders with Mental or Medical Impairments (TCOOMMI)-approved release plan. At any time this condition is in effect, an offender shall remain under the care of a physician and in a medically suitable placement"; the board shall provide appropriate reasons for the decision to approve MRIS.

(B) Deny MRIS: The board shall provide appropriate reasons for the decision to deny MRIS.

(3) The decision to approve release to MRIS for an offender remains in effect until specifically withdrawn by the board.

(e) If a request for a special review meets the criteria set forth in §145.17(f) of this title (relating to Action upon Special Review--Release Denied), the offender's case shall be sent to the special review panel.

(1) The special review panel may take action as set forth in §145.17(i) of this title.

(2) When the special review panel decides the offender's case warrants a special review, the case shall be re-voted by the full board. The presiding officer shall determine the order of the voting panel. Voting options are the same as those in subsections (a) - (c) of this section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 19, 2008.

TRD-200802590

Bettie Wells

General Counsel

Texas Board of Pardons and Paroles

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For further information, please call: (512) 406-5388



## **TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

### **PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES**

#### **CHAPTER 9. MENTAL RETARDATION SERVICES--MEDICAID STATE OPERATING AGENCY RESPONSIBILITIES**

##### **SUBCHAPTER D. HOME AND COMMUNITY-BASED SERVICES (HCS) PROGRAM**

##### **40 TAC §§9.153 - 9.155, 9.160, 9.165, 9.174, 9.177, 9.185**

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts amendments to §§9.153 - 9.155, 9.160, 9.165, 9.174, 9.177, and 9.185 in Chapter 9, Mental Retardation Services--Medicaid State Operating Agency Requirements, Subchapter D, Home and Community-Based Services (HCS) Program. The amendments to §9.153 and §9.155 are adopted with changes to the proposed text published in the January 18, 2008, issue of the *Texas Register* (33 TexReg 497). The amendments to §§9.154, 9.160, 9.165, 9.174, 9.177, and 9.185 are adopted without changes to the proposed text.

The 2008-09 General Appropriations Act (Article II, Department of Aging and Disability Services, Rider 45, H.B. 1, 80th Legislature, Regular Session, 2007) increased the Home and Community-based Services (HCS) Program individual cost limit from 125% to 200% of the annual intermediate care facility for persons with mental retardation (ICF/MR) reimbursement rate. The amendments are adopted to reflect this increased individual cost limit.

The amendments are also adopted to add "falsification of documentation" as a reason DADS may take a discretionary sanction against a program provider. DADS believes that falsification of documents is a serious offense warranting the imposition of any of the adverse actions listed in the rule as DADS deems appro-

priate. Similar amendments to the Texas Home Living (TxHmL) Program rules in Chapter 9, Subchapter N, are adopted elsewhere in this issue of the *Texas Register*.

In addition, the adopted rules describe the types of residential settings that disqualify an individual from receiving HCS Program services. This reflects DADS' policy that the HCS Program is designed for individuals who do not live in congregate care settings such as assisted living facilities and segregated care communities. The adopted rules identify settings to which an individual may be temporarily admitted and during which time DADS may suspend program services.

Further, the adopted rules rename the counseling and therapies service component as "specialized therapies," rename the psychology service component as "behavioral support," and add board certified behavior analysts (BCBAs) as qualified providers of this service to make the HCS Program rules consistent with those of the TxHmL Program.

The adopted rules also remove the requirement that a physician sign the Mental Retardation/Related Conditions Assessment to make the rules consistent with current DADS practice.

Finally, the adopted rules amend the waiting list processes by allowing an applicant's name to be placed on the waiting list or transferred to another mental retardation authority's (MRA's) waiting list by oral request to make the HCS Program procedures more consistent with other DADS waiver programs. In addition, the adopted rules clarify that DADS, not an MRA, removes an applicant's name from the waiting list if the applicant's enrollment has been denied.

DADS received written comments from the Private Providers Association of Texas; EduCare Community Living; Community Access; Willard Incorporated; Vita-Living, Inc.; The Arc of Texas; Community Living Concepts, Inc.; D&S Residential Services LP; Mosaic; Reaching Maximum Independence; Community Homes for Adults; Child Study Center; Advocacy, Incorporated; Betty Hardwick Center; Texana Center; Texas Autism Advocacy; Families for Effective Autism Treatment - North Texas; Down Home Ranch; the Mary Lee Foundation; Sequoia, Inc.; R&K Specialized Homes, Inc.; and 17 individuals. A summary of the comments and responses follow.

**Comment:** Several commenters supported the proposed change to expand the list of qualified providers to include a BCBA as a qualified provider of psychology services.

**Response:** The agency appreciates the support of this proposed change and believes that including a BCBA as a qualified provider of psychology services expands the choices of qualified providers for individuals in need of behavioral support services. The rule language was not changed in response to the comment.

**Comment:** A commenter opposed the proposed change to expand the list of qualified providers of psychology services to include BCBAs. The commenter indicated that Applied Behavioral Analysis (ABA), practiced by BCBAs, violates the principles of neurogenesis and neurodevelopment and that individuals who receive ABA do not recover from autism.

**Response:** While the HCS Program serves some individuals who have diagnoses of autism, the program also serves many individuals with diagnoses other than autism. Further, the addition of BCBAs as a qualified provider of psychology services for individuals in need of behavioral support does not preclude other treatment modalities. The agency believes BCBAs offer effective

treatment and are qualified to provide services to promote the development and reinforcement of acceptable behaviors. The rule language was not changed in response to the comment.

**Comment:** Twenty-nine commenters supported the proposed change to rename the psychology service component as "behavioral support" and to rename the counseling and therapies service component as "specialized therapies." In general, these comments indicate support for this change, as "behavioral support" more accurately reflects the range of services needed by individuals in the HCS Program and "specialized therapies" is more descriptive of the service components included under this service.

**Response:** The agency appreciates the support and believes that renaming the psychology service component as "behavioral support" more accurately reflects the purpose of this service, which is to teach and reinforce positive behavior. Renaming the set of services available under "counseling and therapies" as "specialized therapies" will make the set of service components available under this component consistent with the TxHmL Program's service array. The rule language was not changed in response to the comment.

**Comment:** Twelve commenters expressed concern that the amendment to §9.155(a)(5)(H) will restrict an individual's right to choose where they want to live.

**Response:** The purpose of this rule change is to clarify existing HCS policy and does not represent new restrictions regarding where an individual may live and receive HCS services. Section 9.174(28) requires HCS Program providers to ensure that each individual lives in a home that is a typical residence within the community. From the beginning of the HCS waiver program in 1985, Texas has applied this rule to prohibit the delivery of HCS services and supports in institutional settings and in settings that are segregated or separated from the larger community. Therefore, individuals receiving HCS services and supports must live in their own or their family's home, in a foster or companion care setting, or in a residence with no more than four individuals who receive similar services. The rule language was not changed in response to the comment.

**Comment:** Six commenters requested definitions of the terms "community," "congregate and segregated care," and "close physical proximity."

**Response:** The agency responds that none of these terms are used in the rules and, therefore, definitions are not necessary. The rule language was not changed in response to the comment.

**Comment:** Eleven commenters expressed concern that individuals who are currently receiving HCS services may be forced to move based on the amendment to §9.155(a)(5)(H).

**Response:** The purpose of the amendment is to clarify existing HCS Program policy and does not represent new restrictions regarding where an individual may live and receive HCS services. Further, the agency is not aware of anyone who is currently receiving services who will be required to move as a result of this rule change. Please note that a residential setting must meet *all* of the criteria in §9.155(a)(5)(H) to be an unacceptable setting for an individual to live and receive HCS services and supports. The agency encourages any person who has concerns about the residential setting of an individual because of this rule to seek technical assistance from the agency about such a setting.

**Comment:** The agency received eleven comments requesting clarification of the rule language in the eligibility section of the

rule. Several commenters expressed concern regarding the use of the term "distinguishable." In addition, one comment received asserts that it is not clear whether a small ICF/MR and one four-bed HCS home could be located in the same block.

Response: The agency did not specify in §9.155(a)(5)(H)(i) how a residential area may be "distinguishable" from another residential area because every situation that could implicate this provision of the rule cannot be predicted or described. It is important that the agency have some discretion, taking into consideration the other criteria in the rule, to determine if such a separate residential area exists. The agency agrees to provide technical assistance to providers, as requested, regarding whether a particular residence is permitted under this rule. This rule provision does not prohibit an HCS provider from having homes in the same neighborhood, provided the homes do not create a clearly distinguishable area from the neighborhood at large. The rule language was not changed in response to the comment.

Comment: Eight commenters expressed concern that the rule language is too open to interpretation, leaving the decision up to HCS survey teams regarding whether a residential location is acceptable for an individual receiving HCS services. The suggestion was also made that appropriate residential settings be included in new provider orientation.

Response: As a part of the agency's ongoing education with program surveyors, it strives to increase consistency in the review process across the state. This change to the eligibility section of the rule is a clarification of existing HCS Program policy and does not represent a change in policy concerning where an individual may live and receive HCS services. As the operating agency for the HCS Program, the agency has provided for some discretion in interpreting and applying the requirements set forth in the rule. The agency agrees that a description of appropriate HCS residential settings should be included in new provider orientation and has implemented this change. The rule language was not changed in response to the comment.

Comment: One commenter asserted that the change to the eligibility section of the rule conflicts with the Americans with Disabilities Act (ADA).

Response: The agency does not agree that this proposed rule change violates the ADA. Specifically, it does not deny an individual's HCS Program services based on the individual's disability or violate the federal regulation requiring the state to administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities. The rule language was not changed in response to the comment.

Comment: One commenter requested the agency exclude section §9.155(a)(5)(H)(iii) from the proposed rule, asserting this provision is not necessary to prevent congregate living.

Response: The agency respectfully disagrees and believes that the criterion of shared services in §9.155(a)(5)(H)(iii) is a critical component in determining whether a residence is part of a segregated residential area. The rule language was not changed in response to the comment.

Comment: One commenter wrote in support of the rule change in eligibility criteria with regard to residential setting restrictions.

Response: The agency appreciates the comments and support. The rule language was not changed in response to the comment.

Comment: The agency received two comments supporting the rule change in eligibility criteria with regard to residential setting

restrictions. These comments indicate that the agency should continue to use HCS Program funds to keep people in their communities and help them to maintain natural support systems.

Response: The agency appreciates these comments and support regarding the use of HCS Program funds. The rule language was not changed in response to the comment.

Comment: One commenter asserted that residential setting restrictions should not be included in the eligibility section of the rule and suggested convening a stakeholder workgroup to clarify appropriate residential settings for individuals who receive HCS Program services.

Response: Including this clarification in the eligibility section of the rule is appropriate because it pertains to where an individual may live in order to receive HCS Program services and is, therefore, a criterion for program eligibility. The agency held a stakeholder meeting to discuss this proposed rule change on September 25, 2007, and has worked diligently to develop clear language for the eligibility section of this rule. The agency will be available to provide technical assistance upon request. The agency does not believe that a stakeholder workgroup is necessary at this time. The rule language was not changed in response to the comment.

A change was made to the text in §9.153(16)(B)(iii) and (50)(B)(iii) to remove the use of "Community Living Assistance and Support Services" (CLASS) as an example of a non-HCS Program service similar to residential support or supervised living when describing three- and four-person residences, because the CLASS Program does not offer options similar to residential support or supervised living.

A change was made to the text in §9.153(50)(C) to the definition of "three-person residence" to include a provision addressing DADS' current policy allowing an HCS service provider, the service provider's spouse, or someone with whom the HCS service provider shares a spousal relationship, to live in a three-person residence.

A change to the text of §9.155(a)(5)(H)(ii) was made to remove the phrase ". . . , another developmental disability, or a physical disability. . ." from the proposed rule to more narrowly define the criteria regarding a setting that is unacceptable for a person receiving HCS Program services. A similar change to a rule in the TxHmL Program is being published elsewhere in this issue of the *Texas Register*.

A change was made to the text in §9.155(a)(5)(F) and (d)(6) to add facilities operated by the Department of Assistive and Rehabilitative Services (DARS) to the rule language to provide further specificity with regard to settings where an individual may not live and receive HCS services. A similar change to a rule in the TxHmL Program is being published elsewhere in this issue of the *Texas Register*.

A change was made to §9.155(a)(5)(H) to allow an individual to live in supportive housing under §811 of the National Affordable Housing Act of 1990 and receive HCS services. This is affordable housing for individuals with disabilities funded by the United States Department of Housing and Urban Development and it is not the agency's intent to prevent individuals receiving HCS services from accessing it.

Technical changes were made in §9.153(16)(E) and (50)(D) and §9.155(a)(5)(H) to update a rule cross-reference as a result of changes in this adoption.

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

*§9.153. Definitions.*

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

(1) **Actively involved**--Significant and ongoing involvement with the individual that the individual's service planning team deems to be supportive based on the following:

- (A) observed interactions of the person with the individual;
- (B) advocacy for the individual;
- (C) knowledge of and sensitivity to the individual's preferences, values, and beliefs; and
- (D) availability to the individual for assistance or support if needed.

(2) **Applicant**--A Texas resident seeking services in the HCS Program.

(3) **Behavioral emergency**--A situation in which severely aggressive, destructive, violent, or self-injurious behavior exhibited by an individual:

- (A) poses a substantial risk of imminent probable death of, or substantial bodily harm to, the individual or others;
- (B) has not abated in response to attempted preventive de-escalatory or redirection techniques;
- (C) is not addressed in a written behavior intervention plan; and
- (D) does not occur during a medical or dental procedure.

(4) **CARE**--DADS' Client Assignment and Registration System, a database with demographic and other data about an individual who is receiving services and supports or on whose behalf services and supports have been requested.

(5) **CDS**--Consumer directed services. A service delivery option as defined in §41.103 of this title (relating to Definitions).

(6) **CDSA**--Consumer directed service agency. An entity, as defined in §41.103 of this title, that provides financial management services and, at the request of an individual or LAR, support consultation to the individual participating in CDS.

(7) **CRCG** (Community Resource Coordination Group)--A local interagency group composed of public and private agencies that develops service plans for individuals whose needs can be met only through interagency coordination and cooperation. The group's role and responsibilities are described in the Memorandum of Understanding on Coordinated Services to Persons Needing Services

from More Than One Agency, available on the HHSC website at [www.hhsc.state.tx.us](http://www.hhsc.state.tx.us).

(8) **Critical incident data**--Information a program provider enters in CARE that includes the number of behavior intervention plans authorizing restraint, the number of restraints used, the number of medication errors, the number of serious physical injuries, and the number of deaths.

(9) **DADS**--The Department of Aging and Disability Services.

(10) **DARS**--The Department of Assistive and Rehabilitative Services.

(11) **DFPS**--The Department of Family and Protective Services.

(12) **Emergency situation**--An unexpected situation involving an individual's health, safety, or welfare, of which a person of ordinary prudence would determine that the LAR should be informed, such as:

- (A) an individual needing emergency medical care;
- (B) an individual being removed from his residence by law enforcement;
- (C) an individual leaving his residence without notifying staff and not being located; and
- (D) an individual being moved from his residence to protect the individual (for example, because of a hurricane, fire, or flood).

(13) **Enrollment PDP**--Enrollment person-directed plan. A plan developed for an applicant who is enrolling in the HCS Program that describes the supports and services necessary to preserve the applicant's health and safety and to achieve the desired outcomes identified by the applicant or the applicant's LAR on behalf of the applicant. The plan is based on person-directed planning and is developed in accordance with §9.164 of this subchapter (relating to Process for Enrollment of Applicants).

(14) **Family-based alternative**--A family setting in which the family provider or providers are specially trained to provide support and in-home care for children with disabilities or children who are medically fragile.

(15) **Financial management services**--A service, as defined in §41.103 of this title, that is provided to an individual who chooses to participate in CDS.

(16) **Four-person residence**--A residence:

- (A) that a program provider leases or owns;
- (B) in which at least one person but no more than four persons receive:
  - (i) residential support;
  - (ii) supervised living;
  - (iii) a non-HCS Program service similar to residential support or supervised living (for example, services funded by DFPS or by a person's own resources); or
  - (iv) respite;
- (C) that, if it is the residence of four persons, at least one of those persons receives residential support;
- (D) that is not the residence of any persons other than those described in subparagraph (B) of this paragraph; and

(E) that is not a dwelling described in §9.155(a)(5)(H) of this subchapter (relating to Eligibility Criteria).

(17) HCS Program--The Home and Community-based Services Program operated by DADS as authorized by the Centers for Medicare and Medicaid Services in accordance with §1915(c) of the Social Security Act.

(18) HCS case manager--An employee of the program provider who is responsible for the overall coordination and monitoring of HCS Program services provided to an individual.

(19) HHSC--The Texas Health and Human Services Commission.

(20) ICAP--Inventory for Client and Agency Planning.

(21) ICF/MR--Intermediate care facility for persons with mental retardation or related conditions.

(22) IDT (interdisciplinary team)--A planning team constituted by the program provider for each individual consisting of, at a minimum, the individual and LAR, HCS case manager, and a nurse. Other applicable persons assigned to provide or who are currently providing direct services to the individual and, as appropriate, a physician, other professional personnel, and other persons chosen by the individual or LAR may be included as team members as necessary. If an individual chooses to participate in CDS, a representative of the CDSA may be a member of the IDT if requested by the individual or LAR and agreed to by the CDSA representative.

(23) Individual--A person enrolled in the HCS Program.

(24) IPC (individual plan of care)--A document that describes the type and amount of each HCS Program service component to be provided to an individual and describes medical and other services and supports to be provided through non-program resources.

(25) IPC cost--Estimated annual cost of program services included on an IPC.

(26) IPC year--A 12-month period of time starting on the date an authorized initial or renewal IPC begins.

(27) ISP (individual service plan)--A written plan, from which the IPC is derived, developed by the IDT using person-directed planning and, if appropriate, permanency planning. The ISP describes the assessments, recommendations, deliberations, conclusions, justifications, and outcomes regarding the specific services provided to the individual by the program provider.

(28) Large ICF/MR--A non-state operated ICF/MR with a Medicaid certified capacity of 14 or more.

(29) LAR (legally authorized representative)--A person authorized by law to act on behalf of a person with regard to a matter described in this subchapter, and may include a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(30) LOC (level of care)--A determination given to an individual as part of the eligibility determination process based on data submitted on the MR/RC Assessment.

(31) LON (level of need)--An assignment given by DADS to an individual upon which reimbursement for foster/companion care, supervised living, residential support, and day habilitation is based. The LON assignment is derived from the service level score obtained from the administration of the ICAP to the individual and from selected items on the MR/RC Assessment.

(32) LVN--Licensed vocational nurse.

(33) MRA (mental retardation authority)--An entity to which HHSC's authority and responsibility described in Texas Health and Safety Code, §531.002(11) has been delegated.

(34) MR/RC Assessment--A form used by DADS for LOC determination and LON assignment.

(35) Natural support network--Those persons, including family members, church members, neighbors, and friends, who assist and sustain an individual with supports that occur naturally within the individual's environment and that are not reimbursed or purposely developed by a person or system.

(36) Person-directed planning--A process that empowers the individual (and the LAR on the individual's behalf) to direct the development of a plan for supports and services that meet the individual's outcomes. The process:

(A) identifies existing supports and services necessary to achieve the individual's outcomes;

(B) identifies natural supports available to the individual and negotiates needed services system supports;

(C) occurs with the support of a group of people chosen by the individual (and the LAR on the individual's behalf); and

(D) accommodates the individual's style of interaction and preferences regarding time and setting.

(37) Permanency planning--A philosophy and planning process that focuses on the outcome of family support for an individual under 22 years of age by facilitating a permanent living arrangement in which the primary feature is an enduring and nurturing parental relationship.

(38) Permanency Planning Review Screen--A screen in CARE that, if completed by an MRA, identifies community supports needed to achieve an individual's permanency planning outcomes and provides information necessary for approval to provide supervised living or residential support to the individual.

(39) Primary correspondent--A person who may request, in accordance with the *Mental Retardation Services and Supports Interest List Policy and Procedures Manual*, that an MRA place an applicant's name on the HCS Program waiting list.

(40) Program provider--An entity that provides HCS Program services under a waiver program provider agreement with DADS as defined in Subchapter Q of this chapter (relating to Enrollment of Medicaid Waiver Program Providers).

(41) Restraint--

(A) A manual method, except for physical guidance or prompting of brief duration, or a mechanical device to restrict:

(i) the free movement or normal functioning of all or a portion of an individual's body; or

(ii) normal access by an individual to a portion of the individual's body.

(B) Physical guidance or prompting of brief duration becomes a restraint if the individual resists the physical guidance or prompting.

(42) RN--Registered nurse.

(43) Seclusion--The involuntary separation of an individual away from other individuals and the placement of the individual alone in an area from which the individual is prevented from leaving.

(44) Service back-up plan--A plan, as defined in §41.103 of this title, that ensures continuity of critical program services if service delivery is interrupted.

(45) Service coordinator--An employee of an MRA who is responsible for assisting an individual, or LAR on behalf of the individual, in accessing medical, social, educational, and other appropriate services, including HCS Program services.

(46) Service planning team--A planning team constituted by an MRA consisting of an applicant, LAR, service coordinator, and other persons chosen by the applicant or LAR on behalf of the applicant.

(47) SSI--Supplemental Security Income.

(48) Support consultation--A service, as defined in §41.103 of this title, that is provided by a support advisor employed by, or contracted through, a CDSA or retained as a contractor by an employer in the CDS option.

(49) TANF--Temporary Assistance for Needy Families.

(50) Three-person residence--A residence:

(A) that a program provider leases or owns;

(B) in which at least one person but no more than three persons receive:

(i) residential support;

(ii) supervised living;

(iii) a non-HCS Program service similar to residential support or supervised living (for example, services funded by DFPS or by a person's own resources); or

(iv) respite;

(C) that is not the residence of any person other than an HCS service provider, the service provider's spouse or person with whom the service provider has a spousal relationship, or a person described in subparagraph (B) of this paragraph; and

(D) that is not a dwelling described in §9.155(a)(5)(H) of this subchapter (relating to Eligibility Criteria).

*§9.155. Eligibility Criteria and Suspension of HCS Program Services.*

(a) An applicant or individual is eligible for HCS Program services if he or she:

(1) meets the financial eligibility criteria as defined in subsection (b) of this section;

(2) meets one of the following criteria:

(A) qualifies for the ICF/MR LOC I as defined in §9.238 of this chapter (relating to Level of Care I Criteria), as determined by DADS according to §9.159 of this subchapter (relating to Level of Care (LOC) Determination); and

(i) has had a determination of mental retardation performed in accordance with state law (Texas Health and Safety Code, Chapter 593, Admission and Commitment to Mental Retardation Services, Subchapter A); or

(ii) has been diagnosed by a licensed physician as having a related condition as defined in §9.203 of this chapter (relating to Definitions) before enrollment in the HCS Program; or

(B) qualifies for the ICF/MR LOC I as defined in §9.238 of this chapter or ICF/MR LOC VIII as defined in §9.239 of this chapter (relating to ICF/MR Level of Care VIII Criteria), as determined by

DADS according to §9.159 of this subchapter, and has been determined by DADS:

(i) to have mental retardation or a related condition;

(ii) to need specialized services; and

(iii) to be inappropriately placed in a Medicaid certified nursing facility based on an annual resident review conducted in accordance with the requirements of §19.2500 of this title (relating to Preadmission Screening and Resident Review (PASARR));

(3) has an approved IPC for which the IPC cost does not exceed 200% of the annual ICF/MR reimbursement rate paid to a small ICF/MR, as defined in 1 TAC §355.456 (relating to Reimbursement Methodology) for the individual's level of need as it would be assigned under §9.240 of this chapter (relating to Level of Need) or 200% of the estimated annualized per capita cost for ICF/MR services, whichever is greater;

(4) is not enrolled in another waiver program under §1915(c) of the Social Security Act; and

(5) does not reside in:

(A) an ICF/MR licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 252, or certified by DADS;

(B) a nursing facility licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 242;

(C) an assisted living facility licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 247;

(D) a residential child-care operation licensed or subject to being licensed by DFPS unless it is a foster family home or a foster group home;

(E) a facility licensed or subject to being licensed by the Department of State Health Services (DSHS);

(F) a facility operated by DARS;

(G) a residential facility operated by the Texas Youth Commission, a jail, or a prison; or

(H) a setting in which two or more dwellings, including units in a duplex or apartment complex, single family homes, or facilities listed in subparagraphs (A) - (G) of this paragraph, excluding supportive housing under §811 of the National Affordable Housing Act of 1990, meet all of the following criteria:

(i) the dwellings create a residential area distinguishable from other areas primarily occupied by persons who do not require routine support services because of a disability;

(ii) most of the residents of the dwellings are persons with mental retardation; and

(iii) the residents of the dwellings are provided routine support services through personnel, equipment, or service facilities shared with the residents of the other dwellings.

(b) An applicant or individual is financially eligible for the HCS Program if he or she:

(1) is categorically eligible for SSI benefits;

(2) has once been eligible for and received SSI benefits and continues to be eligible for Medicaid as a result of protective coverage mandated by federal law;

(3) is under age 18 and:



- (A) residing with parents or a spouse;
- (B) eligible for Medicaid benefits only if institutionalized;
- (C) meets the SSI criteria for disability;
- (D) meets the SSI criteria for institutional deeming; and
- (E) has income and resources that meet the requirements of the SSI program; or
- (4) is under 20 years of age and:
  - (A) is financially the responsibility of DFPS in whole or in part; and
  - (B) is being cared for in a foster home or group home:
    - (i) that is licensed or certified and supervised by DFPS or a licensed public or private nonprofit child placing agency; and
    - (ii) in which a foster parent is the primary caregiver residing in the home;
- (5) is a member of a family who receives full Medicaid benefits as a result of qualifying for TANF; or
- (6) is eligible for SSI benefits in the community, except on the basis of income, and meets the special institutional income limit for Medicaid benefits in Texas without regard to spousal income.
- (c) For individuals with spouses who live in the community, the income and resource eligibility requirements are determined according to the spousal impoverishment provisions in §1924 of the Social Security Act and as specified in the Medicaid State Plan.
- (d) If an individual is temporarily admitted to one of the following settings, DADS suspends HCS Program services during that admission:
  - (1) a hospital;
  - (2) an ICF/MR licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 252 or certified by DADS;
  - (3) a nursing facility licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 242;
  - (4) a residential child-care operation licensed or subject to being licensed by DFPS;
  - (5) a facility licensed or subject to being licensed by the DSHS;
  - (6) a facility operated by DARS; or
  - (7) a residential facility operated by the Texas Youth Commission, a jail, or a prison.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-3734

## SUBCHAPTER N. TEXAS HOME LIVING (TXHML) PROGRAM

**40 TAC §§9.553, 9.554, 9.556, 9.558, 9.559, 9.570, 9.573, 9.577, 9.580**

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts amendments to §§9.553, 9.554, 9.556, 9.558, 9.559, 9.570, 9.573, 9.577, and 9.580, in Chapter 9, Mental Retardation Services--Medicaid State Operating Agency Responsibilities, Subchapter N, Texas Home Living (TxHmL) Program. The amendments to §9.553 and §9.570, are adopted with changes to the proposed text as published in the January 18, 2008, issue of the *Texas Register* (33 TexReg 504). The amendments to §§9.554, 9.556, 9.558, 9.559, 9.573, 9.577, and 9.580, are adopted without changes to the proposed text.

The service components in the TxHmL Program are divided into two service categories, the Community Living Service Category and the Technical and Professional Supports Service Category. Currently, the rule states that the annual cost limit (i.e., service category limit) for the Community Living Service Category is \$8,000 and the annual cost limit for the Technical and Professional Supports Service Category is \$2,000, with a combined total cost limit of \$10,000. An individual's Individual Plan of Care (IPC) may not exceed \$10,000. Cost limits are based, in part, on TxHmL provider rates that are adopted by HHSC. A rate increase by HHSC may cause an individual's IPC cost to exceed the total cost limit without an increase in the amount of services being provided. The service category and total cost limits were revised in 2007 to allow for increased IPC costs. Because future rate increases may cause these limits to be revised again, amendments are adopted to delete the specific cost limits and instead reference the TxHmL Program waiver application approved by the Centers for Medicare and Medicaid Services (CMS), which includes the revised limits. Cost limits will be updated in the waiver application as necessary.

In addition, the amendments are adopted to add a definition of "own home or family home" that describes the types of institutional and congregate settings that disqualify an individual from receiving TxHmL Program services. The rules reflect DADS' policy that the TxHmL Program is designed for individuals who do not live in congregate care settings. Further, the adopted rules identify settings to which an individual may be temporarily admitted, during which time DADS may suspend program services.

The adopted rules also place current billing practices into rule and permit DADS to require a program provider to develop and submit, in accordance with DADS instructions, a corrective action plan that improves the program provider's billing practices. This new requirement is consistent with that in the HCS Program. The adopted rules also require a program provider to enter critical incident data in the Client Assignment and Registration System (CARE). This requirement is consistent with the current TxHmL Program provider agreement and the HCS Program rules. Collection of this data allows DADS to track critical incidents and develop strategies to reduce risk and improve the quality of services.

Finally, the adopted rules allow for DADS to take discretionary actions against a provider if the provider falsifies documents used to demonstrate compliance with the rule. DADS believes that falsification of documents is a serious offense warranting

the imposition of any of the adverse actions listed in the rule as DADS deems appropriate.

DADS received no comments regarding adoption of the amendments. However, the agency changed §9.553(22)(F) to add a residential facility operated by the Department of Assistive and Rehabilitative Services (DARS) to the list of residences that are not considered "own home or family home."

In addition, a change was made to §9.553(22)(H) to exclude Housing and Urban Development (HUD) supportive housing under §811 of the National Housing Act of 1990 from the list of residential settings in which an individual receiving TxHmL services may not live. It is not DADS intention to prevent individuals who receive TxHmL services from accessing supportive housing funded by HUD.

The agency also changed §9.553(22)(H)(ii) to delete the phrase ". . . another developmental disability, or a physical disability. . ." to more narrowly define the criteria regarding a setting that is unacceptable for a person receiving TxHmL Program services.

A change was made to §9.570(f)(6) to add a facility operated by DARS to the list of settings in which, if an individual is temporarily admitted, TxHmL services are suspended during the admission.

The changes to §§9.553(22)(F), 9.553(22)(H), 9.553(22)(H)(ii) and 9.570(f)(6) are consistent with changes made in the Home and Community-based Services Program rule published elsewhere in this issue of the *Texas Register*.

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

#### §9.553. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

(1) Applicant--A Texas resident seeking services in the TxHmL Program.

(2) CARE--Client Assignment and Registration System. A DADS database with demographic and other data about an individual who is receiving services and supports or on whose behalf services and supports have been requested.

(3) CDS--Consumer directed services. A service delivery option as defined in §41.103 of this title (relating to Definitions).

(4) CDSA--Consumer directed service agency. An entity, as defined in §41.103 of this title, that provides financial management services and, at the request of an individual or LAR, support consultation to an individual participating in CDS.

(5) CMS--Centers for Medicare and Medicaid Services. The federal agency that administers Medicaid programs.

(6) Critical incident data--Information a program provider enters in CARE that includes the number of behavior intervention plans authorizing restraint, the number of restraints used, the number of med-

ication errors, the number of serious physical injuries, and the number of deaths.

(7) DADS--The Department of Aging and Disability Services.

(8) DFPS--The Department of Family and Protective Services.

(9) Financial management services--A service, as defined in §41.103 of this title, that is provided to an individual participating in CDS.

(10) HCS Program--The Home and Community-based Services Program operated by DADS as authorized by CMS in accordance with §1915(c) of the Social Security Act.

(11) HHSC--The Texas Health and Human Services Commission.

(12) ICF/MR Program--The Intermediate Care Facilities for Persons with Mental Retardation or Related Conditions Program.

(13) Individual--A person enrolled in the TxHmL Program.

(14) IPC--Individual plan of care. A document that describes the type and amount of each TxHmL Program service component to be provided to an individual and medical and other services and supports to be provided through non-TxHmL Program resources.

(15) IPC cost--Estimated annual cost of program services included on an IPC.

(16) IPC year--A 12-month period of time starting on the date an authorized initial or renewal IPC begins.

(17) LAR--Legally authorized representative. A person authorized by law to act on behalf of a person with regard to a matter described in this subchapter, and may include a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(18) LOC--Level of care. A determination made by DADS about an applicant or individual as part of the TxHmL Program eligibility determination process based on data submitted on the MR/RC Assessment.

(19) LON--Level of need. An assignment given by DADS for an applicant or individual that is derived from the service level score obtained from the administration of the Inventory for Client and Agency Planning (ICAP) to the individual and from selected items on the MR/RC Assessment.

(20) MRA--Mental retardation authority. An entity to which HHSC's authority and responsibility described in THSC, §531.002(11) has been delegated.

(21) MR/RC Assessment--A form used by DADS for LOC determination and LON assignment.

(22) Own home or family home--A residence that is not:

(A) an intermediate care facility for persons with mental retardation or related conditions (ICF/MR) licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 252 or certified by DADS;

(B) a nursing facility licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 242;

(C) an assisted living facility licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 247;

(D) a residential child-care operation licensed or subject to being licensed by DFPS unless it is a foster family home or a foster group home;

(E) a facility licensed or subject to being licensed by the Department of State Health Services;

(F) a residential facility operated by the Department of Assistive and Rehabilitative Services;

(G) a residential facility operated by the Texas Youth Commission, a jail, or a prison; or

(H) a setting in which two or more dwellings, including units in a duplex or apartment complex, single family homes, or facilities listed in subparagraphs (A) - (G) of this paragraph, but excluding supportive housing under Section 811 of the National Affordable Housing Act of 1990, meet all of the following criteria:

(i) the dwellings create a residential area distinguishable from other areas primarily occupied by persons who do not require routine support services because of a disability;

(ii) most of the residents of the dwellings are persons with mental retardation; and

(iii) the residents of the dwellings are provided routine support services through personnel, equipment, or service facilities shared with the residents of the other dwellings.

(23) Performance contract--A written agreement between DADS and an MRA for the provision of one or more functions as described in THSC, §533.035(b).

(24) PDP--Person-directed plan. A plan developed for an applicant in accordance with §9.567 of this subchapter (relating to Process for Enrollment) that describes the supports and services necessary to achieve the desired outcomes identified by the applicant or LAR on behalf of the applicant.

(25) Program provider--An entity that provides TxHmL Program services under a program provider agreement with DADS in accordance with Subchapter Q of this chapter (relating to Enrollment of Medicaid Waiver Program Providers).

(26) Program provider agreement--A written agreement between DADS and a program provider that obligates the program provider to deliver TxHmL Program service components, except for financial management services and support consultation.

(27) Respite facility--A site that is not a residence and that is owned or leased by a program provider for the purpose of providing out-of-home respite to not more than six individuals receiving TxHmL Program services or other persons receiving similar services at any one time.

(28) Service back-up plan--A plan, as defined in §41.103 of this title, that ensures continuity of critical service components if service delivery is interrupted.

(29) Service coordinator--An employee of an MRA who is responsible for assisting an applicant, individual, or LAR to access needed medical, social, educational, and other appropriate services including TxHmL Program services.

(30) Service planning team--A planning team constituted by an MRA consisting of an applicant or individual, LAR, service coordinator, and other persons chosen by the applicant, individual, or LAR.

(31) Support consultation--A service, as defined in §41.103 of this title, that is provided to an individual participating in the CDS option at the request of the individual or LAR.

(32) TAC--Texas Administrative Code. A compilation of state agency rules published by the Texas Secretary of State in accordance with Texas Government Code, Chapter 2002, Subchapter C.

(33) THSC--Texas Health and Safety Code. Texas statutes relating to health and safety.

(34) TxHmL Program--The Texas Home Living Program, operated by DADS and approved by CMS in accordance with §1915(c) of the Social Security Act, that provides community-based services and supports to eligible individuals who live in their own homes or in their family homes.

§9.570. *Permanent Discharge from the TxHmL Program and Suspension of TxHmL Program Services.*

(a) An individual may be permanently discharged from the TxHmL Program if:

(1) the individual no longer meets the eligibility criteria specified in §9.556 of this subchapter (relating to Eligibility Criteria);

(2) the individual or LAR requests permanent discharge; or

(3) the individual or LAR refuses to cooperate in the delivery or planning of services and:

(A) such refusal is documented by the program provider and the service coordinator; and

(B) the service coordinator has explained to the individual or LAR in writing that such refusal may result in discharge from the TxHmL Program.

(b) DADS may propose permanent discharge of an individual at its own initiation or based on an MRA's request for permanent discharge of an individual.

(c) To request permanent discharge of an individual by DADS, the individual's service coordinator must, within 14 calendar days of determining that one of the criteria in subsection (a) of this section is met, submit a written request containing the following information to DADS and provide a copy of the request to the individual or LAR:

(1) the reason permanent discharge is requested;

(2) a discharge plan documenting, as appropriate:

(A) that, before submission of the request for permanent discharge, the individual or LAR was informed of the individual's option to transfer to another program provider and the consequences of permanent discharge for receiving future TxHmL Program services; and

(B) the service linkages that are in place following the individual's discharge from the TxHmL Program; and

(3) if permanent discharge is recommended for the reason stated in subsection (a)(3) of this section:

(A) a description of the action by the individual or LAR demonstrating refusal to cooperate in the delivery or planning of services and the effect of such action on the planning or delivery of services;

(B) a description of the action by the program provider and service coordinator, including face-to-face meetings between the service coordinator and individual or LAR, to resolve the circumstances causing the individual's or LAR's refusal to cooperate; and

(C) a copy of the written explanation sent by the service coordinator to the individual or LAR explaining the consequences of refusal to cooperate.

(d) If DADS proposes to permanently discharge an individual, DADS sends a written discharge notification to the individual or LAR, the program provider, and the MRA indicating the effective date of the discharge and the individual's right to a fair hearing in accordance with §9.571 of this subchapter (relating to Fair Hearings).

(e) If the reason for the proposed permanent discharge is that the individual no longer meets the eligibility criteria described in §9.556(a)(5) and (8) of this subchapter, DADS instructs the service coordinator to:

(1) inform the individual or LAR that DADS, based on availability, offers the individual a program vacancy in the HCS Program in accordance with §9.164(a)(3) of this chapter (relating to Process for Enrollment of Applicants); and

(2) offer to assist the individual or LAR to apply for other services for which the individual may be eligible including other home and community-based service programs and ICF/MR Program services.

(f) If an individual is temporarily admitted to one of the following settings, DADS suspends TxHmL Program services during that admission:

(1) a hospital;

(2) an ICF/MR licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 252 or certified by DADS;

(3) a nursing facility licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 242;

(4) a residential child-care operation licensed or subject to being licensed by DFPS;

(5) a facility licensed or subject to being licensed by the Department of State Health Services;

(6) a facility operated by the Department of Assistive and Rehabilitative Services; or

(7) a residential facility operated by the Texas Youth Commission, a jail, or a prison.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-3734



## PART 2. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

### CHAPTER 104. PURCHASE OF GOODS AND SERVICES BY THE DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

The Texas Health and Human Services Commission ("HHSC"), on behalf of the Texas Department of Assistive and Rehabilitative Services, adopts the amendments to Title 40, Part 2, Chapter 104, Purchase of Goods and Services by the Department of Assistive and Rehabilitative Services. The amendments to Subchapter C, Purchase of Goods and Services, §104.255, Definitions, and Subchapter J, Protest Procedures, §104.301, Availability of Protest Procedures, are adopted without changes to the proposed text as published in the March 21, 2008, issue of the *Texas Register* (33 TexReg 2530) and will not be republished.

The amendments to §104.255 clarify and improve the definitions relating to Chapter 104. The amendments to §104.301 provide streamlined procedures for potential contractors to protest non-selection for informal competitive procurements, which are competitive procurements with a dollar value of \$25,000 or less, in accordance with requirements of 1 TAC Part 15, Chapter 391, Purchase of Goods and Services by Health and Human Services Agencies.

Texas Government Code, Chapter 2001 (the Administrative Procedure Act), §2001.039, Agency Review of Existing Rules, requires that each state agency review and consider for readoption each rule adopted by that agency. 40 TAC Chapter 104 consists of Subchapter C, Purchase of Goods and Services, §§104.251, 104.253, 104.255, 104.257, 104.259, 104.261, and 104.263, and Subchapter J, Protest Procedures, §104.301. HHSC has determined that the reasons for initially adopting these rules continue to exist. Note that 40 TAC Chapter 104, was proposed for review in the November 30, 2007, issue of the *Texas Register* (32 TexReg 8863).

No comments were received regarding adoption of the amendments.

## SUBCHAPTER C. PURCHASE OF GOODS AND SERVICES

### 40 TAC §104.255

The amendments are adopted pursuant to HHSC's statutory rulemaking authority under Texas Government Code §2155.144, which provides HHSC the authority to promulgate rules for the acquisition of goods and services; Texas Government Code §531.033, which provides the HHSC Executive Commissioner with the authority to promulgate rules necessary to carry out HHSC's duties; and Texas Government Code §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

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For further information, please call: (512) 424-4050



## SUBCHAPTER J. PROTEST PROCEDURES

### 40 TAC §104.301

The amendments are adopted pursuant to Texas Health and Human Services Commission's ("HHSC") statutory rulemaking authority under Texas Government Code §2155.144, which provides HHSC the authority to promulgate rules for the acquisition of goods and services; Texas Government Code §531.033, which provides the HHSC Executive Commissioner with the authority to promulgate rules necessary to carry out HHSC's duties; and Texas Government Code §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

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For further information, please call: (512) 424-4050



## PART 15. TEXAS VETERANS COMMISSION

### CHAPTER 452. ADMINISTRATION GENERAL PROVISIONS

#### 40 TAC §452.7

The Texas Veterans Commission (commission) adopts new §452.7, concerning Commission Duties, without changes to the proposed text as published in the February 15, 2008, issue of the *Texas Register* (33 TexReg 1277). Since no changes were made to §452.7, the text of the rule will not be republished.

The purpose of §452.7 is to establish the policy for commission duties. This section is required under House Bill 3426 and authorized under the Texas Government Code §434.010, granting the commission authority to adopt rules that it considers necessary for its administration.

There were no comments received regarding the new section.

The new section is adopted under Texas Government Code Chapter 434, §434.010, which authorizes the commission to adopt rules it considers necessary for its administration.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Tina M. Coronado

General Counsel

Texas Veterans Commission

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For further information, please call: (512) 463-1981



### CHAPTER 456. CONTRACT NEGOTIATION AND MEDIATION

#### 40 TAC §§456.1 - 456.17

The Texas Veterans Commission (commission) adopts new Chapter 456, §§456.1 - 456.17, regarding contract negotiation and mediation, without changes to the proposed text as published in the February 15, 2008, issue of the *Texas Register* (33 TexReg 1277). Since no changes were made to the new sections, the text of the rules will not be republished.

The new chapter establishes the procedure for contract negotiation and mediation. The new chapter is required under Texas Government Code Chapter 2260 and authorized under §434.010 of the Texas Government Code, granting the commission authority to adopt rules that it considers necessary for its administration.

There were no comments received regarding the new sections.

The new sections are adopted under Texas Government Code Chapter 434, §434.010, which authorizes the commission to adopt rules it considers necessary for its administration.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Tina M. Coronado

General Counsel

Texas Veterans Commission

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For further information, please call: (512) 463-1981



### CHAPTER 457. PROTESTS OF AGENCY PURCHASES

#### 40 TAC §457.1

The Texas Veterans Commission (commission) adopts new Chapter 457, §457.1, concerning protests of agency purchases, without changes to the proposed text as published in the February 15, 2008, issue of the *Texas Register* (33 TexReg 1280). Since no changes were made to §457.1, the text of the rule will not be republished.

The purpose of the new section is to establish the procedure for the protesting of agency purchases. The new section is required under §2155.076 of the Texas Government Code and authorized under §434.010 of the Texas Government Code, granting the commission authority to adopt rules that it considers necessary for its administration.

There were no comments received regarding the new section.

The new section is adopted under Texas Government Code, Chapter 434, §434.010, which authorizes the commission to adopt rules it considers necessary for its administration.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 16, 2008.

TRD-200802538

Tina M. Coronado

General Counsel

Texas Veterans Commission

Effective date: June 5, 2008

Proposal publication date: February 15, 2008

For further information, please call: (512) 463-1981



## CHAPTER 458. STATUTORY ADVISORY COMMITTEES

### 40 TAC §458.1

The Texas Veterans Commission (commission) adopts new Chapter 458, §458.1, concerning the establishment of advisory committees, with a change to the proposed text as published in the February 15, 2008, issue of the *Texas Register* (33 TexReg 1282). Specifically, the change is to section (d) and increases the maximum number of members of the advisory committee from 15 to 18.

The purpose of §458.1 is to establish the Veterans Employment and Training Advisory Committee to seek input of employers to better assist veterans in gaining employment and/or training. The new section is authorized under Texas Government Code §434.0101, granting the commission the authority to establish advisory committees for the development of rules or policies. Texas Government Code §2110.005 requires an agency that establishes an advisory committee to adopt rules for the establishment of those committees.

There were no comments received regarding the new section.

The new section is adopted under Texas Government Code Chapter 434, §434.0101, granting the commission the authority to establish advisory committees for the development of rules or policies.

§458.1. *Veterans Employment and Training Advisory Committee.*

(a) The Veterans Employment and Training Advisory Committee is established.

(b) Purpose. The purpose of the Veterans Employment and Training Advisory Committee is to seek the input of employers to better assist veterans in gaining successful employment and/or training.

(c) The Executive Director may appoint one or more members of the commission staff to serve and assist the committee. This position(s) shall be non-voting. This person(s) shall keep minutes of committee meetings and prepare those minutes for approval by the presiding member of the committee and shall assist the presiding officer in preparing the reports required for submission to the commission.

(d) Composition and appointment of members. The Veterans Employment and Training Advisory Committee shall consist of at least 7, but no more than 18 persons appointed by the commission. Appoint-

ment to the committee will be limited to individuals who are nominated by veterans organizations that have a national employment program or individuals who are recognized authorities in the fields of business, employment, training, rehabilitation or labor.

(e) Removal of members. Members of the committee serve at the pleasure of the commission. The commission may remove a member from the committee by a majority vote of the commission.

(f) Conditions of membership. The term of office for each member appointed by the commission shall be staggered for a two-year term. To achieve staggered terms, one-half of the initial appointments will be for a two-year term; and one-half will be for a three-year term. A member whose term has expired shall continue to serve until a qualified replacement is appointed by the commission. In the event that a member appointed by the commission cannot complete his or her term or is removed by the commission, the commission shall appoint a qualified replacement to serve the remainder of the term.

(g) No compensation. Committee members appointed by the commission shall serve without compensation. Committee members appointed by the commission are not entitled to reimbursement from the commission for travel and per diem incurred in the performance of their official duties.

(h) Meetings. The committee shall meet quarterly unless directed otherwise by the commission. The committee shall be subject to meeting at the call of the presiding member. A quorum shall consist of a majority of the committee membership.

(i) Duration. The Committee shall remain in existence as long as deemed necessary by the Commissioners of the Texas Veterans Commission.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 16, 2008.

TRD-200802539

Tina M. Coronado

General Counsel

Texas Veterans Commission

Effective date: June 5, 2008

Proposal publication date: February 15, 2008

For further information, please call: (512) 463-1981



### 40 TAC §458.2

The Texas Veterans Commission (commission) adopts new Chapter 458, §458.2, concerning the establishment of advisory committees, without changes to the proposed text as published in the February 15, 2008, issue of the *Texas Register* (33 TexReg 1283). Since no changes were made to §458.2, the text of the rule will not be republished.

The purpose of §458.2 is to establish the Fund for Veterans' Assistance Advisory Committee. The new rule is authorized under Texas Government Code §434.0101, granting the commission the authority to establish advisory committees for the development of rules or policies. Texas Government Code §2110.005 requires an agency that establishes an advisory committee to adopt rules for the establishment of those committees.

There were no comments received regarding the new section.

The new section is adopted under Texas Government Code Chapter 434, §434.0101, which authorizes the commission to establish advisory committees for the development of rules or policies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 16, 2008.

TRD-200802540

Tina M. Coronado

General Counsel

Texas Veterans Commission

Effective date: June 5, 2008

Proposal publication date: February 15, 2008

For further information, please call: (512) 463-1981

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#### **40 TAC §458.3**

The Texas Veterans Commission (commission) adopts new Chapter 458, §458.3, concerning the establishment of advisory committees, without changes to the proposed text as published in the February 15, 2008, issue of the *Texas Register* (33 TexReg 1284). Since no changes were made to §458.3, the text of the rule will not be republished.

The purpose of §458.3 is to establish the Veterans Communication Advisory Committee. This rule is authorized under Texas Government Code §434.0101, granting the commission the authority to establish advisory committees for the development of rules or policies. Texas Government Code §2110.005 requires an agency that establishes an advisory committee to adopt rules for the establishment of those committees.

There were no comments received regarding the new section.

The new section is adopted under Texas Government Code Chapter 434, §434.0101, which authorizes the commission to establish advisory committees.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 16, 2008.

TRD-200802541

Tina M. Coronado

General Counsel

Texas Veterans Commission

Effective date: June 5, 2008

Proposal publication date: February 15, 2008

For further information, please call: (512) 463-1981

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# REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

## Proposed Rule Reviews

Texas Department of Agriculture

### Title 4, Part 1

The Texas Department of Agriculture (the department) proposes to review Title 4, Texas Administrative Code, Part 1, Chapter 3, Subchapters A - J, concerning Boll Weevil Eradication Program, pursuant to the Texas Government Code, §2001.039. Section 2001.039 requires state agencies to review and consider for readoption each of their rules every four years. The review must include an assessment of whether the original justification for the rules continues to exist.

As part of its review the department is proposing amendments to Chapter 3, Subchapter B, §3.20, relating to Statement of Purpose and the Role of the Department, and the repeal of Subchapter B, §3.21, relating to Rule Consistency and Approval. The proposed amendments and repeal are published in the Proposed Rules section of this issue of the *Texas Register*.

The assessment of Chapter 3, Subchapters A - J, by the department at this time indicates that, with the exception of the proposed amendments to §3.20 and the repeal of §3.21, the reason for readopting without changes all sections in Chapter 3, Subchapters A - J continues to exist.

The department is accepting comment on the review of Chapter 3, Subchapters A - J. Comments on the review must be submitted within 30 days following the publication of this notice in the *Texas Register*. Comments may be submitted to Brian Murray, Assistant Commissioner for External Relations, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711.

TRD-200802602

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Filed: May 19, 2008



Board of Tax Professional Examiners

### Title 22, Part 27

The Board of Tax Professional Examiners (BTPE) will review and consider whether to readopt, readopt with amendments, or repeal the rules in Title 22, Part 27, Chapter 623, concerning Registration and Certification, of the Texas Administrative Code. This review is conducted in accordance with Texas Government Code, §2001.039.

BTPE has conducted a preliminary review of Chapter 623 and has determined that the reasons for initially adopting the chapter continue to exist.

All comments or questions regarding this review may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to David E. Montoya, Executive Director, at Board of Tax Professional Examiners, 333 Guadalupe Street, Suite 2-520, Austin, Texas 78701-3942; by facsimile to (512) 305-7304; or by e-mail to [btpe1@txbtpe.state.tx.us](mailto:btpe1@txbtpe.state.tx.us). Any proposed changes to Chapter 623 will be published for comment in the "Proposed Rules" section of a subsequent issue of the *Texas Register*.

Chapter 623. Registration and Certification.

§623.1. Registration: General.

§623.2. Eligibility To Register.

§623.3. Persons Required To Register.

§623.4. Persons Permitted to Register.

§623.5. Use of Titles.

§623.6. Classification of Registration.

§623.7. Field of Work.

§623.8. Qualifications for Certification as Registered Professional Appraiser (RPA).

§623.9. Qualifications for Certification as Registered Texas Assessor/Collector (RTA).

§623.10. Qualifications for Certification as Registered Texas Collector (RTC).

§623.11. Reclassification.

§623.12. Recertification.

§623.13. Base Date Adjustment in Classification.

§623.14. Certification and Recertification: General.

§623.15. Adjustment of Time Requirement.

§623.16. Notification Responsibilities of Registrant.

§623.17. Training for Chief Appraisers.

TRD-200802535

David E. Montoya

Executive Director

Board of Tax Professional Examiners

Filed: May 16, 2008



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**Adopted Rule Reviews**

State Board for Educator Certification

**Title 19, Part 7**

The State Board for Educator Certification (SBEC) adopts the review of Title 19, Texas Administrative Code (TAC), Chapter 227, Provisions for Educator Preparation Students, Subchapter A, Admission to an Educator Preparation Program, and Subchapter B, Teach for Texas Pilot Program, pursuant to the Texas Government Code, §2001.039. The SBEC proposed the review of 19 TAC Chapter 227 in the April 4, 2008, issue of the *Texas Register* (33 TexReg 2833).

Relating to the review of 19 TAC Chapter 227, Subchapters A and B, the SBEC finds that the reasons for adoption continue to exist and readopts the rules. The SBEC is scheduled to consider revisions to 19 TAC Chapter 227, Subchapters A and B, at its next regularly scheduled meeting.

Following is a summary of the public comment received and corresponding response.

Comment: Legal counsel for an alternative certification program commented that proposed language in §227.15, Contingency Admission, should be clarified to make clear that undergraduate students in their final semester could begin an alternative certification program, and that they should also be allowed to take a subject content examination, but not the pedagogy and professional responsibilities examination, while in contingency admission status.

Board response: The SBEC took no action on revisions to 19 TAC Chapter 227, Subchapters A and B, as published in the May 9, 2008, SBEC agenda. The SBEC is scheduled to consider revisions to 19 TAC Chapter 227, Subchapters A and B, at its next regularly scheduled meeting.

This concludes the review of 19 TAC Chapter 227.

TRD-200802629

Karen Loonam

Deputy Associate Commissioner, Educator Certification and Standards,  
Texas Education Agency

State Board for Educator Certification

Filed: May 20, 2008

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The State Board for Educator Certification (SBEC) adopts the review of Title 19, Texas Administrative Code (TAC), Chapter 228, Requirements for Educator Preparation Programs, pursuant to the Texas Government Code, §2001.039. The SBEC proposed the review of 19 TAC Chapter 228 in the April 4, 2008, issue of the *Texas Register* (33 TexReg 2833).

Relating to the review of 19 TAC Chapter 228, the SBEC finds that the reasons for adoption continue to exist and readopts the rules.

The SBEC is scheduled to consider revisions to 19 TAC Chapter 228 at its next regularly scheduled meeting.

The SBEC received no comments related to the rule review of 19 TAC Chapter 228.

This concludes the review of 19 TAC Chapter 228.

TRD-200802628

Karen Loonam

Deputy Associate Commissioner, Educator Certification and Standards,  
Texas Education Agency

State Board for Educator Certification

Filed: May 20, 2008

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Employees Retirement System of Texas

**Title 34, Part 4**

Pursuant to the notice of the proposed rule review that was published in the March 21, 2008, issue of the *Texas Register* (33 TexReg 2557), the Employees Retirement System of Texas ("ERS") reviewed 34 Texas Administrative Code ("TAC") Chapter 71, Creditable Service, pursuant to Texas Government Code §2001.039, to determine whether the reason for adopting the rules in Chapter 71 continues to exist. No comments were received concerning the proposed review.

As a result of the review, the ERS Board of Trustees (Board) has determined that the reason for adopting the rules in 34 TAC Chapter 71 continues to exist, and therefore, the Board readopts Chapter 71. This completes ERS' review of 34 TAC Chapter 71, Creditable Service.

TRD-200802542

Paula A. Jones

General Counsel

Employees Retirement System of Texas

Filed: May 16, 2008

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Texas Board of Pardons and Paroles

**Title 37, Part 5**

The Texas Board of Pardons and Paroles files this notice of readoption of 37 TAC Chapter 141 (General Provisions), Subchapter C (Submission and Presentation of Information and Representation of Offenders), and Chapter 145 (Parole), Subchapter A (Parole Process). The Board amended §141.61 to clarify the language of the rule and §145.15 to add new language to establish a voting option for placement of offenders into the Sex Offender Education Program (SOEP) or the Sex Offender Treatment Program (SOTP). The readoption of Chapters 141 and 145 is filed in accordance with the Board of Pardons and Paroles' Notice of Intent to Review published in the March 14, 2008, issue of the *Texas Register* (33 TexReg 2349). No public comments were received.

The assessment of Chapters 141 and 145 indicates that the original justification for the rules continues to exist, and the Board is readopting the rules in accordance with Texas Government Code, §2001.039. This concludes the review of 37 TAC Chapters 141 and 145.

TRD-200802591

Bettie Wells

General Counsel

Texas Board of Pardons and Paroles

Filed: May 19, 2008

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# IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

## Comptroller of Public Accounts

### Notice of Request for Proposals

Pursuant to Chapter 403 and Chapter 2156, Texas Government Code, and Chapter 54, Subchapter F, Texas Education Code, the Comptroller of Public Accounts (Comptroller) on behalf of the Texas Prepaid Higher Education Tuition Board (Board) announces its Request for Proposals (RFP #186b) for the purpose of obtaining Bank Loan investment management services for the Board for the Texas Tomorrow Fund Guaranteed Tuition Plan Funds (Texas Tomorrow Fund I). The selected contractor (Contractor) will advise and assist the Board and Comptroller in administering the Board's investment activities related to a Bank Loan Mandate for Texas Tomorrow Fund I. The Comptroller, as Chair and Executive Director of the Board, is issuing this RFP on behalf of the Board so that the Board may move forward with retaining the necessary Contractor. The Comptroller and the Board reserve the right to award more than one contract under the RFP. If approved by the Board, Contractor will be expected to begin performance of the contract on or about September 1, 2008, or as soon thereafter as practical.

Contact: Parties interested in submitting a proposal should contact William Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, in the Issuing Office at: 111 E. 17th St., Room G-24, Austin, Texas 78774, (512) 305-8673, to obtain a complete copy of the RFP. The Comptroller will mail copies of the RFP only to those parties specifically requesting a copy. The RFP will be available for pick-up at the above referenced address on Friday, May 30, 2008, after 10:00 a.m. Central Zone Time (CZT) and during normal business hours thereafter. The Comptroller will also make the entire RFP available electronically on the Electronic State Business Daily (ESBD) at: <http://esbd.cpa.state.tx.us> after 10:00 a.m. CZT on Friday, May 30, 2008.

Questions and Non-Mandatory Letters of Intent: All written inquiries, questions, and Non-mandatory Letters of Intent to propose must be received at the above-referenced address not later than 2:00 p.m. (CZT) on Friday, June 6, 2008. Prospective proposers are encouraged to fax non-mandatory Letters of Intent and Questions to (512) 463-3669 to ensure timely receipt. Non-mandatory Letters of Intent must be addressed to William Clay Harris, Assistant General Counsel, Contracts, and must contain the information as stated in the corresponding Section of the RFP and be signed by an official of that entity. On or about Thursday, June 12, 2008, the Comptroller expects to post responses to questions on the ESBD. Late Non-mandatory Letters of Intent and Questions will not be considered under any circumstances. Respondents shall be solely responsible for verifying timely receipt of Non-Mandatory Letters of Intent and Questions in the Issuing Office.

Closing Date: Proposals must be delivered in the Issuing Office to the attention of the Assistant General Counsel, Contracts, no later than 2:00 p.m. (CZT), on Monday, June 23, 2008. Late Proposals will not be considered under any circumstances. Respondents shall be solely responsible for verifying time receipt of Proposals in the Issuing Office.

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. The Board and Comptroller will make the final decision. The Comptroller and the Board each reserve the right to

accept or reject any or all proposals submitted. The Comptroller and the Board are not obligated to execute a contract on the basis of this notice or the distribution of any RFP. The Comptroller and the Board shall not pay for any costs incurred by any entity in responding to this Notice or to the RFP.

The anticipated schedule of events pertaining to this solicitation is as follows: Issuance of RFP - May 30, 2008, after 10:00 a.m. CZT; Non-Mandatory Letters of Intent and Questions Due - June 6, 2008, 2:00 p.m. CZT; Official Responses to Questions posted - June 12, 2008; Proposals Due - June 23, 2008, 2:00 p.m. CZT; Contract Execution - September 1, 2008, or as soon thereafter as practical; Commencement of Services - September 1, 2008.

TRD-200802646

Pamela Smith

Deputy General Counsel for Contracts

Comptroller of Public Accounts

Filed: May 21, 2008



### Notice of Vendor Conference

The Comptroller of Public Accounts (Comptroller) wishes to announce that a vendor conference will be conducted for potential respondent(s) interested in assisting the Comptroller in conducting Appraisal Standards Reviews (ASR) of selected county appraisal districts (CADs) throughout the state for the coming Fiscal Year (FY 2009). This vendor conference will be an informational meeting designed to provide updated information about the ASR process to potential respondents interested in assisting the Comptroller in conducting ASRs, as required by law.

Background: According to Texas Property Tax Code (Code), §5.102, the Comptroller is annually required to perform ASRs of selected CADs with eligible school districts, as determined by the Comptroller's Annual Property Value Study of School District Taxable Wealth (Study) in the state. The Comptroller anticipates conducting about 30 ASR reviews during FY 2009.

Conference Time and Location: Parties interested in attending are hereby notified that the vendor conference will be held between 1:00 p.m. and 5:00 p.m., Central Zone Time (CZT), in Room 1.100, of the William B. Travis State Office Building, located at 1701 North Congress Avenue, Austin, Texas 78701.

Contact Person: To request a copy of the agenda for the conference or obtain other information, interested firms and individuals should contact Jeff Van Pelt, at (512) 463-3820. Handouts and other information will be provided at the conference. Attendees will be provided the opportunity to ask questions about the ASR process and protocols and network with other attendees.

No Obligation: Comptroller is under no legal or other obligation to execute any contracts on the basis of this notice of vendor conference or as a consequence of conducting this vendor conference. All attendees understand that Comptroller shall make no award of any contracts or otherwise as a result of this conference and reserves full discretion and authority to issue a Request for Proposals (RFP) for the future services,

if any, necessary to conduct any and all ASRs, if any, as required by law.

No Liability or Costs: Comptroller shall not incur liability of any kind to any person or firm or other entity and shall not pay for any costs or expenses incurred by any person or other entity in travelling to or in attending this vendor conference or otherwise in responding to this Notice or to any future RFP.

TRD-200802645

Pamela Smith

Deputy General Counsel for Contracts

Comptroller of Public Accounts

Filed: May 21, 2008

## Office of Consumer Credit Commissioner

### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009, and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 05/26/08 - 06/01/08 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup>/credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 05/26/08 - 06/01/08 is 18% for Commercial over \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 06/01/08 - 06/30/08 is 5.00% for Consumer/Agricultural/Commercial/credit through \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 06/01/08 - 06/30/08 is 5.00% for Commercial over \$250,000.

<sup>1</sup>Credit for personal, family or household use.

<sup>2</sup>Credit for business, commercial, investment or other similar purpose.

TRD-200802613

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: May 20, 2008

## Court Reporters Certification Board

### Certification of Court Reporters

Following the examination of applicants on April 24, 2008, the Texas Court Reporters Certification Board certified to the Supreme Court of Texas the following individuals who are qualified in the method indicated to practice shorthand reporting pursuant to Chapter 52 of the Texas Government Code, V.T.C.A.:

MACHINE SHORTHAND: JILL MOYLE - HOUSTON, TX; MARIA PENA - DALLAS, TX; DAELEEN MELENDEZ - EL PASO, TX; AMANDA BARTHLOME - ANGLETON, TX; JENNIFER CAMPBELL - MCKINNEY, TX; KATHERENE SARRATT - PROSPER, TX; CHRISTINA NOYOLA - BEDFORD, TX; DESTINY CALAHAN - CLEBURNE, TX; and AMANDA BLOMSTROM - MORRISTOWN, NJ.

Following the examination of applicants on April 24, 2008, the Texas Court Reporters Certification Board certified to the Supreme Court of Texas the following individuals who are qualified in the method in-

dicated to practice shorthand reporting pursuant to Chapter 52 of the Texas Government Code, V.T.C.A.:

ORAL STENOGRAPHY: REBECCA MIFFLIN - DALLAS, TX; SHERRI PERKINS - GRAND PRAIRIE, TX; ARDENIA HUNT - IRVING, TX; JUAN HERRERA - FORT WORTH, TX; and PHILIP SOMMERLAD - DALLAS, TX.

TRD-200802614

Sheryl Jones

Administrator of Licensing

Court Reporters Certification Board

Filed: May 20, 2008

## Credit Union Department

### Application to Amend Articles of Incorporation

Notice is given that the following application has been filed with the Credit Union Department and is under consideration:

An application was received from U.S. Employees Credit Union, The Woodlands, Texas to amend its Articles of Incorporation relating to place of business.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200802643

Harold E. Feeney

Commissioner

Credit Union Department

Filed: May 21, 2008

### Applications for a Merger or Consolidation

Notice is given that the following application has been filed with the Credit Union Department and is under consideration:

An application was received from Sid Richardson Employees State Credit Union (Odessa) seeking approval to merge with Members Financial Federal Credit Union (Midland), with the latter being the surviving credit union.

An application was received from First Central Credit Union (Waco) seeking approval to merge with Superior Community Credit Union (Brownwood). First Central Credit Union will be the surviving credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200802642

Harold E. Feeney  
Commissioner  
Credit Union Department  
Filed: May 21, 2008



### Applications to Expand Field of Membership

Notice is given that the following applications have been filed with the Credit Union Department (Department) and are under consideration:

An application was received from Midwestern State University Credit Union, Wichita Falls, Texas to expand its field of membership. The proposal would permit students who are officially accepted and attending Midwestern State University, to be eligible for membership in the credit union.

An application was received from MemberSource Credit Union, Houston, Texas to expand its field of membership. The proposal would permit employees of Satellite Logistics Group, and their subsidiaries, affiliates or successors who work in, are paid or supervised from Houston, Texas, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit Unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at <http://www.tcred.state.tx.us/applications.html>. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200802641  
Harold E. Feeney  
Commissioner  
Credit Union Department  
Filed: May 21, 2008



### Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following applications:

#### Applications to Expand Field of Membership - Approved

Service 1st Credit Union, Greenville, Texas - See *Texas Register* issue dated August 31, 2007.

Star of Texas Credit Union, Austin, Texas - See *Texas Register* issue dated January 25, 2008.

Texans Credit Union, Richardson, Texas - See *Texas Register* issue dated February 29, 2008.

U.S. Employees Credit Union, The Woodlands, Texas - See *Texas Register* issue dated February 29, 2008.

#### Applications for a Merger or Consolidation - Approved

Nordstrom Sulphur Springs Federal Credit Union (Sulphur Springs) and Service 1st Credit Union (Greenville) - See *Texas Register* issue dated August 31, 2007.

BMA Credit Union (Mesquite) and Neighborhood Credit Union (Dallas) - See *Texas Register* issue dated April 11, 2008.

TRD-200802644  
Harold E. Feeney  
Commissioner  
Credit Union Department  
Filed: May 21, 2008



## Texas Commission on Environmental Quality

### Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **June 30, 2008**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on June 30, 2008**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: Alonzo Aguilar dba Aguilars Grocery; DOCKET NUMBER: 2008-0719-PST-E; IDENTIFIER: RN102274669; LOCATION: Brewster County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 Texas Administrative Code (TAC) §334.50(a)(1)(A), by failing to provide release detection; PENALTY: \$1,750; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(2) COMPANY: City of Corpus Christi; DOCKET NUMBER: 2008-0051-MSW-E; IDENTIFIER: RN100224724; LOCATION: Nueces County; TYPE OF FACILITY: landfill; RULE VIOLATED: 30 TAC §330.121(a) and Municipal Solid Waste Permit Number 423-A, by exceeding the facility's permitted capacity; PENALTY: \$7,800; Supplemental Environmental Project (SEP) offset amount of \$7,800 applied to Beautify Corpus Christi Association-Cleanup of Illegal Dump Sites; ENFORCEMENT COORDINATOR: Cynthia McKaughan, (512) 239-0735; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(3) COMPANY: DAVIS AND WARDLAW OIL CO., INC.; DOCKET NUMBER: 2008-0424-PST-E; IDENTIFIER: RN105457196; LOCATION: Seymour and Wylie; Baylor and Collin Counties; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §115.221 and Texas Health and Safety Code (THSC), §382.085(b), by failing to ensure that the displaced vapors from the underground storage tank (UST) were captured during transfer of gasoline from a tank-truck into an UST system; PENALTY: \$900; ENFORCEMENT COORDINATOR: Shontay Wilcher, (512) 239-2136; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674 and 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: El Paso Independent School District; DOCKET NUMBER: 2007-1858-AIR-E; IDENTIFIER: RN103102869; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: transportation annex; RULE VIOLATED: 30 TAC §114.100(a) and THSC, §382.085(b), by failing to ensure a minimum of 2.7% oxygenate in gasoline; PENALTY: \$790; ENFORCEMENT COORDINATOR: Aaron Houston, (409) 899-8784; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(5) COMPANY: El Paso Independent School District; DOCKET NUMBER: 2007-1982-AIR-E; IDENTIFIER: RN102523354; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: fuel dispensing station; RULE VIOLATED: 30 TAC §114.100(a) and THSC, §382.085(b), by failing to ensure a minimum of 2.7% oxygenate in gasoline; PENALTY: \$750; ENFORCEMENT COORDINATOR: Aaron Houston, (409) 899-8784; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(6) COMPANY: Falcon Gunit Co., Inc.; DOCKET NUMBER: 2008-0376-AIR-E; IDENTIFIER: RN100720440; LOCATION: Austin, Travis County; TYPE OF FACILITY: gunit materials handling plant; RULE VIOLATED: 30 TAC §106.203(7) and THSC, §382.085(b), by failing to comply with conditions of Permit by Rule Registration Number 33084, which requires that the transfer of cement from the storage silo shall be handled through closed conveying systems with no visible fugitive emissions; PENALTY: \$950; ENFORCEMENT COORDINATOR: Sidney Wheeler, (512) 239-4969; REGIONAL OFFICE: 2800 South Interstate Highway 35, Suite 100, Austin, Texas 78704-5700, (512) 339-2929.

(7) COMPANY: Fiorano Ventures, L.L.C.; DOCKET NUMBER: 2007-0509-EAQ-E; IDENTIFIER: RN105155808; LOCATION: Comal County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of an Edwards Aquifer Protection Plan prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone; PENALTY: \$24,000; ENFORCEMENT COORDINATOR: Sidney Wheeler, (512) 239-4969; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(8) COMPANY: J.C. CONOCO, INC.; DOCKET NUMBER: 2008-0193-PST-E; IDENTIFIER: RN101836518; LOCATION: Baytown, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code §26.3475(c)(1), by failing to ensure that all USTs are monitored in a manner which will detect a release at a frequency of at least once every month (not to exceed 35 days between each monitoring); 30 TAC §334.50(d)(1)(B)(ii) and the Code §26.3475(c)(1), by failing to conduct reconciliation of inventory control records at least once per month sufficiently accurate to detect a release which equals or exceeds the sum of 1% of the flow-through plus 130 gallons; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control measures for all USTs involved with the retail sale of

petroleum substances used as motor fuel each operating day; 30 TAC §334.10(b), by failing to maintain the required UST records and make them immediately available for inspection upon request by agency personnel; 30 TAC §334.8(c)(4)(A)(vii) and (c)(5)(B)(ii), by failing to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form; 30 TAC §334.8(c)(5)(A)(i) and the Code §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; and 30 TAC §334.45(c)(3)(A), by failing to install an emergency shutoff valve (also known as shear or impact valve) on each pressurized delivery or product line and ensure that it is securely anchored at the base of the dispenser; PENALTY: \$11,305; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5825; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(9) COMPANY: Julian Castaneda; DOCKET NUMBER: 2008-0733-WOC-E; IDENTIFIER: RN105482970; LOCATION: Seagoville, Dallas County; TYPE OF FACILITY: public water supply operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$210; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: City of Kenedy; DOCKET NUMBER: 2008-0034-PWS-E; IDENTIFIER: RN101428274; LOCATION: Kenedy, Karnes County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.43(c), by failing to maintain the facility's storage tanks so that they are covered, designed and fabricated in strict accordance with American Water Works Association standards; 30 TAC §290.44(h)(1)(B)(i), by failing to establish an adequate internal cross-connection control program; 30 TAC §290.46(1), by failing to flush all dead-end mains at monthly intervals; 30 TAC §290.46(s)(1), by failing to calibrate well meters at least once every three years; 30 TAC §290.46(u), by failing to plug abandoned Well Number 5 with cement according to 16 TAC Chapter 76 or return it to a non-deteriorated condition; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices that shall ensure the good working condition and general appearance of the system's facilities and equipment; and 30 TAC §290.46(f)(3)(A)(i)(II), by failing to maintain a record of the amount of chemicals used each day; PENALTY: \$3,665; SEP offset amount of \$2,932 applied to providing first time sewer service for one low income individual that is currently utilizing a septic system; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(11) COMPANY: Leo Kopecky dba Leo's Stop N Shop; DOCKET NUMBER: 2007-1978-PST-E; IDENTIFIER: RN101696110; LOCATION: Schulenburg, Fayette County; TYPE OF FACILITY: convenience store; RULE VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, existing USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; PENALTY: \$7,875; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 2800 South Interstate Highway 35, Suite 100, Austin, Texas 78704-5700, (512) 339-2929.

(12) COMPANY: Red River Redevelopment Authority; DOCKET NUMBER: 2008-0067-IWD-E; IDENTIFIER: RN101274231; LOCATION: Bowie County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), the Code §26.121(a), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0004664000, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with the permitted effluent

limitations for five-day biochemical oxygen demand (BOD<sub>5</sub>), total suspended solids (TSS), and ammonia- nitrogen (NH<sub>3</sub>-N) for Outfall 001; 30 TAC §305.125(1) and §319.1 and TPDES Permit Number WQ0004664000, Monitoring and Reporting Requirements Number 1, by failing to submit complete monthly Discharge Monitoring Reports (DMRs); PENALTY: \$11,880; SEP offset amount of \$5,940 applied to Texas Association of Resource Conservation and Development Areas, Inc.-Unauthorized Trash Dump Clean-Up; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5860; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(13) COMPANY: Shirley Creek Marina, Inc.; DOCKET NUMBER: 2007-1849-MWD-E; IDENTIFIER: RN102080199; LOCATION: Nacogdoches County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), the Code §26.121, and TPDES Permit Number 10947001, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, by failing to comply with the permitted effluent limitations for BOD<sub>5</sub>, TSS, and minimum chlorine residual; 30 TAC §305.125(17) and TPDES Permit Number 10947001, Sludge Provisions, by failing to submit the annual sludge report; and 30 TAC §305.125(17) and TPDES Permit Number 10947001, Monitoring and Reporting Requirements Number 1, by failing to timely submit the DMRs; PENALTY: \$13,338; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(14) COMPANY: Southwest Convenience Stores, LLC dba 7-Eleven 57652; DOCKET NUMBER: 2008-0730-PST-E; IDENTIFIER: RN105204283; LOCATION: Odessa, Ector County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c) and (c)(5)(A)(i), by failing to possess a valid TCEQ delivery certificate prior to receiving fuel and by failing to submit initial/renewal UST registration and self-certification forms; PENALTY: \$1,750; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 3300 North A Street, Building 4-107, Midland, Texas 79705-5406, (432) 570-1359.

(15) COMPANY: THE DOW CHEMICAL COMPANY; DOCKET NUMBER: 2007-1843-IHW-E; IDENTIFIER: RN100225945; LOCATION: Freeport, Brazoria County; TYPE OF FACILITY: organic chemical manufacturing; RULE VIOLATED: 30 TAC §335.221(a)(6) and (11), 40 Code of Federal Regulations (CFR) §266.102(e)(2)(ii)(A), 266.103(c)(1)(v), and 266.104(b)(1), and Hazardous Waste Permit Number 50161, Special Conditions I.3.b.1., by failing to meet the regulatory limit of 100 parts per million for stack gas concentration of carbon monoxide; and 30 TAC §335.221(a)(6) and (13), 40 CFR §266.102(e)(7)(ii) and §266.103(g), and Hazardous Waste Permit Number 50161, Special Conditions I.3.b.2., by failing to maintain a functioning automatic waste feed cutoff system; PENALTY: \$51,600; SEP offset amount of \$20,640 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5824; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(16) COMPANY: The Reinforced Earth Company; DOCKET NUMBER: 2008-0373-PWS-E; IDENTIFIER: RN101237972; LOCATION: McLennan County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(3)(O), by failing to provide an intruder-resistant fence or lockable building in order to protect the facility's well; 30 TAC §290.46(f)(2), by failing to provide water system records for commission review at the time of the investigation; 30 TAC §290.44(h)(4), by failing to ensure backflow prevention assemblies which are installed to provide protection against health hazards are tested and certified to be operating within specifica-

tions at least annually by a recognized backflow prevention assembly tester; 30 TAC §290.44(d), by failing to maintain a minimum pressure of 35 pounds per square inch at all points within the distribution system; 30 TAC §290.46(m)(4), by failing to maintain all distribution lines, water storage and pressure maintenance facilities, and all related appurtenances in a watertight condition; 30 TAC §290.45(d)(2)(A)(ii), by failing to provide a minimum pressure tank capacity of 220 gallons; and 30 TAC §290.122(a)(2) and §290.46(q), by failing to institute "Special Precautions" in the event of inadequate chlorine residuals; PENALTY: \$1,363; ENFORCEMENT COORDINATOR: Andrea Linson-Mgbeoduru, (512) 239-1482; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas (254) 751-0335.

(17) COMPANY: Tidwell Super Cleaners, Inc.; DOCKET NUMBER: 2006-1123-DCL-E; IDENTIFIER: RN103987962; LOCATION: Houston, Harris County; TYPE OF FACILITY: dry cleaner drop station; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form to the TCEQ for the facility; PENALTY: \$889; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(18) COMPANY: Total Petrochemicals USA, Inc.; DOCKET NUMBER: 2008-0414-AIR-E; IDENTIFIER: RN100212109; LOCATION: La Porte, Harris County; TYPE OF FACILITY: plastics manufacturing plant; RULE VIOLATED: 30 TAC §116.615(2), Standard Permit Number 78963 and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$8,450; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3629; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(19) COMPANY: Veolia ES Technical Solutions, L.L.C.; DOCKET NUMBER: 2007-1936-IWD-E; IDENTIFIER: RN103219002; LOCATION: Jefferson County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0002417000, Effluent Limitations and Monitoring Requirements Number 1, and the Code §26.121(a)(1), by failing to comply with its permitted effluent limits for chemical oxygen demand, total copper, total lead, total zinc, total aluminum, and total mercury; PENALTY: \$7,470; SEP offset amount of \$3,735 applied to South East Texas Regional Planning Commission-West Port Arthur Home Energy Efficiency Program; ENFORCEMENT COORDINATOR: Pamela Campbell, (512) 239-4493; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(20) COMPANY: Yellow Transportation, Inc.; DOCKET NUMBER: 2008-0718-WQ-E; IDENTIFIER: RN104209663; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: storm water; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Multi-Sector General Permit; PENALTY: \$700; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-200802615

Mary R. Risner

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: May 20, 2008



Correction of Error

The Texas Commission on Environmental Quality adopted amendments to 30 TAC §114.512 and §114.517 in the February 15, 2008, issue of the *Texas Register* (33 TexReg 1345). The amendments were adopted without changes to the proposal and were not republished

in the issue. However, due to a *Texas Register* error, the last line of rule text was deleted from §114.517(12) when the rule amendment was incorporated into the Texas Administrative Code and the on-line document database.

Section 114.517(12) should read as follows:

"(12) a motor vehicle when idling is necessary to power a heater or air conditioner while a driver is using the vehicle's sleeper berth for a government-mandated rest period and is not within two miles of a facility offering external heating and air conditioning connections at a time when those connections are available. This subsection expires September 1, 2009."

TRD-200802639



#### Enforcement Orders

A default order was entered regarding Feroz Ali Momin dba Snappy Mart, Docket No. 2005-0393-MLM-E on May 13, 2008, assessing \$17,780 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mary Hammer, Staff Attorney, at (512) 239-2496, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Joseph Yarbrough, Docket No. 2005-0463-AIR-E on May 13, 2008, assessing \$1,050 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff Attorney, at (713) 422-8914, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jaime Garcia, Docket No. 2006-0077-MSW-E on May 13, 2008, assessing \$3,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Alfred Oloko, Staff Attorney, at (713) 422-8918, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Frances Alvarez dba Frans Laundry, Docket No. 2006-1143-DCL-E on May 13, 2008, assessing \$1,185 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Barham A. Richard, Staff Attorney, at (512) 239-0107, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Water Association of North Lake, Inc., Docket No. 2006-1750-PWS-E on May 13, 2008, assessing \$2,813 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mary Hammer, Staff Attorney, at (512) 239-2496, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Huntsman Petrochemical Corporation, Docket No. 2006-1775-MLM-E on May 13, 2008, assessing \$98,263 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Daniel Siringi, Enforcement Coordinator, at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding O'Boy Service Company, Inc., Docket No. 2006-1942-SLG-E on May 13, 2008, assessing \$8,925 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Barham A. Richard, Staff Attorney, at (512) 239-0107, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lide Industries, Inc., Docket No. 2006-2045-AIR-E on May 13, 2008, assessing \$306,570 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathleen Decker, Staff Attorney, at (512) 239-6500, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Dora Mae Mekan dba Nick's Grocery 3, Docket No. 2007-0101-PWS-E on May 13, 2008, assessing \$1,050 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Benjamin Thompson, Staff Attorney, at (512) 239-1297, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Abdul Oliwi dba Fina Gas Station, Docket No. 2007-0291-PST-E on May 13, 2008, assessing \$8,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Patrick Jackson, Staff Attorney, at (512) 239-0651, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ConocoPhillips Company, Docket No. 2007-0558-AIR-E on May 13, 2008, assessing \$210,128 in administrative penalties with \$42,025 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator, at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Francisco Terrazas dba San Jose Custom Shutters, Docket No. 2007-0579-AIR-E on May 13, 2008, assessing \$2,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna Cox, Staff Attorney, at (512) 239-0974, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Mohammad Arif dba Super Stop 4, Docket No. 2007-0723-PST-E on May 13, 2008, assessing \$4,690 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Patrick Jackson, Staff Attorney, at (512) 239-6501, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Clint West dba West Contracting, Docket No. 2007-0899-AIR-E on May 13, 2008, assessing \$1,050 in administrative penalties with \$210 deferred.

Information concerning any aspect of this order may be obtained by contacting Daniel Siringi, Enforcement Coordinator, at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding McMullen County Water Control & Improvement District No. 1 and McMullen County, Docket No. 2007-1046-MWD-E on May 13, 2008 assessing, \$20,160 in administrative penalties with \$4,032 deferred.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator, at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mohammed Basheer dba Exxon 45, Docket No. 2007-1087-PST-E on May 13, 2008, assessing \$7,850 in administrative penalties with \$1,570 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator, at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Equistar Chemicals, LP, Docket No. 2007-1230-AIR-E on May 13, 2008, assessing \$20,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator, at (713) 422-8931, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Happy Hill Farm Children's Home, Inc., Docket No. 2007-1247-PWS-E on May 13, 2008, assessing \$1,520 in administrative penalties with \$304 deferred.

Information concerning any aspect of this order may be obtained by contacting Tel Croston, Enforcement Coordinator, at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding International Paper Company, Docket No. 2007-1253-AIR-E on May 13, 2008, assessing \$14,375 in administrative penalties with \$2,875 deferred.

Information concerning any aspect of this order may be obtained by contacting Daniel Siringi, Enforcement Coordinator, at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Christ Community Church of Houston dba Christ Community Church, Docket No. 2007-1284-PWS-E on May 13, 2008, assessing \$210 in administrative penalties with \$42 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator, at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rudolphs, Inc. dba The Store, Docket No. 2007-1349-PST-E on May 13, 2008, assessing \$5,100 in administrative penalties with \$1,020 deferred.

Information concerning any aspect of this order may be obtained by contacting Wallace Myers, Enforcement Coordinator, at (512) 239-6580, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Peace Partners Car Wash, L.L.C., Docket No. 2007-1357-AIR-E on May 13, 2008, assessing \$2,040 in administrative penalties with \$408 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Ruble, Enforcement Coordinator, at (361) 825-3126,

Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Fort Bend Regional Landfill, LP, Docket No. 2007-1394-MSW-E on May 13, 2008, assessing \$15,500 in administrative penalties with \$3,100 deferred.

Information concerning any aspect of this order may be obtained by contacting Colin Barth, Enforcement Coordinator, at (512) 239-0068, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding San Angelo Feed Yard, Ltd., Docket No. 2007-1414-AGR-E on May 13, 2008, assessing \$4,200 in administrative penalties with \$840 deferred.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator, at (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Builders Marble Company, Docket No. 2007-1433-AIR-E on May 13, 2008, assessing \$12,065 in administrative penalties with \$2,413 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator, at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rohm and Haas Texas Incorporated, Docket No. 2007-1437-AIR-E on May 13, 2008, assessing \$85,500 in administrative penalties with \$17,100 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Ruble, Enforcement Coordinator, at (361) 825-3126, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sunoco Pipeline L.P., Docket No. 2007-1448-AIR-E on May 13, 2008, assessing \$6,250 in administrative penalties with \$1,250 deferred.

Information concerning any aspect of this order may be obtained by contacting Sidney Wheeler, Enforcement Coordinator, at (512) 239-4969, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GB Biosciences Corporation, Docket No. 2007-1449-AIR-E on May 13, 2008, assessing \$23,875 in administrative penalties with \$4,775 deferred.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator, at (512) 239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TurboCare, Inc., Docket No. 2007-1458-PWS-E on May 13, 2008, assessing \$210 in administrative penalties with \$42 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator, at (210) 403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Palo Duro Service Company, Inc., Docket No. 2007-1507-PWS-E on May 13, 2008, assessing \$962 in administrative penalties with \$192 deferred.

Information concerning any aspect of this order may be obtained by contacting Christopher Keffer, Enforcement Coordinator, at (512) 239-



5610, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lyondell Chemical Company, Docket No. 2007-1546-AIR-E on May 13, 2008, assessing \$10,000 in administrative penalties with \$2,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator, at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lakeshore Utility Company, Docket No. 2007-1579-MWD-E on May 13, 2008, assessing \$12,240 in administrative penalties with \$2,448 deferred.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator, at (512) 239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Davis Gas Processing, Inc., Docket No. 2007-1620-AIR-E on May 13, 2008, assessing \$5,225 in administrative penalties with \$1,045 deferred.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator, at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AK/HA Manufacturing, LLC, Docket No. 2007-1642-AIR-E on May 13, 2008, assessing \$2,675 in administrative penalties with \$535 deferred.

Information concerning any aspect of this order may be obtained by contacting Sidney Wheeler, Enforcement Coordinator, at (512) 239-4969, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Plano, Docket No. 2007-1644-WQ-E on May 13, 2008, assessing \$15,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator, at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jim Wells County, Docket No. 2007-1652-PST-E on May 13, 2008, assessing \$15,750 in administrative penalties with \$3,150 deferred.

Information concerning any aspect of this order may be obtained by contacting Wallace Myers, Enforcement Coordinator, at (512) 239-6580, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ExxonMobil Oil Corporation, Docket No. 2007-1658-AIR-E on May 13, 2008, assessing \$40,950 in administrative penalties with \$8,190 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator, at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Goodyear Tire & Rubber Company, Docket No. 2007-1659-AIR-E on May 13, 2008, assessing \$6,475 in administrative penalties with \$1,295 deferred.

Information concerning any aspect of this order may be obtained by contacting Aaron Houston, Enforcement Coordinator, at (409) 899-

8784, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Brazos River Authority and Lower Colorado River Authority, Docket No. 2007-1670-MWD-E on May 13, 2008, assessing \$13,500 in administrative penalties with \$2,700 deferred.

Information concerning any aspect of this order may be obtained by contacting Libby Hogue, Enforcement Coordinator, at (512) 239-1165, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Orange County Water Control and Improvement District No. 2, Docket No. 2007-1673-MWD-E on May 13, 2008, assessing \$14,200 in administrative penalties with \$2,840 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrew Hunt, Enforcement Coordinator, at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kent Distributors, Incorporated, Docket No. 2007-1680-PWS-E on May 13, 2008, assessing \$6,440 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Christopher Keffer, Enforcement Coordinator, at (512) 239-5610, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Prairie View A&M University, Docket No. 2007-1696-MWD-E on May 13, 2008, assessing \$10,950 in administrative penalties with \$2,190 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator, at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Petro Stopping Centers, L.P. dba Petro Stopping Center 4, Docket No. 2007-1706-PST-E on May 13, 2008, assessing \$16,050 in administrative penalties with \$3,210 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator, at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding McEachern Enterprises, Inc., Docket No. 2007-1716-MLM-E on May 13, 2008, assessing \$3,150 in administrative penalties with \$630 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator, at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Monarch Utilities I L.P., Docket No. 2007-1718-MWD-E on May 13, 2008, assessing \$4,140 in administrative penalties with \$828 deferred.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator, at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mo Vac Service Company of Alice, Docket No. 2007-1721-PST-E on May 13, 2008, assessing \$8,600 in administrative penalties with \$1,720 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Greimel, Enforcement Coordinator, at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Air Liquide Large Industries U.S. LP, Docket No. 2007-1734-AIR-E on May 13, 2008, assessing \$2,068 in administrative penalties with \$413 deferred.

Information concerning any aspect of this order may be obtained by contacting Bryan Elliott, Enforcement Coordinator, at (512) 239-6162, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Southside Place, Docket No. 2007-1760-MWD-E on May 13, 2008, assessing \$3,600 in administrative penalties with \$720 deferred.

Information concerning any aspect of this order may be obtained by contacting Lynley Doyen, Enforcement Coordinator, at (512) 239-1364, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SPX Corporation, Docket No. 2007-1768-MWD-E on May 13, 2008, assessing \$3,060 in administrative penalties with \$612 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Jecha, Enforcement Coordinator, at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding New Waverly Ventures Ltd. Co., Docket No. 2007-1773-IWD-E on May 13, 2008, assessing \$7,515 in administrative penalties with \$1,503 deferred.

Information concerning any aspect of this order may be obtained by contacting Lynley Doyen, Enforcement Coordinator, at (512) 239-1364, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Wolf Hollow I, L.P., Docket No. 2007-1802-IWD-E on May 13, 2008, assessing \$17,160 in administrative penalties with \$3,432 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator, at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Hemphill, Docket No. 2007-1806-MWD-E on May 13, 2008, assessing \$5,550 in administrative penalties with \$1,110 deferred.

Information concerning any aspect of this order may be obtained by contacting Lynley Doyen, Enforcement Coordinator, at (512) 239-1364, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Best Materials, Inc., Docket No. 2007-1809-WQ-E on May 13, 2008, assessing \$835 in administrative penalties with \$167 deferred.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator, at (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sammy Rene Lugo, Docket No. 2007-1819-LII-E on May 13, 2008, assessing \$262 in administrative penalties with \$52 deferred.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator, at (512) 239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sealy Concrete, Inc., Docket No. 2007-1847-IWD-E on May 13, 2008, assessing \$4,750 in administrative penalties with \$950 deferred.

Information concerning any aspect of this order may be obtained by contacting Libby Hogue, Enforcement Coordinator, at (512) 239-1165, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Town of Van Horn, Docket No. 2007-1856-MWD-E on May 13, 2008, assessing \$2,900 in administrative penalties with \$580 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrew Hunt, Enforcement Coordinator, at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Matias G. Quintanilla, Docket No. 2007-1864-WOC-E on May 13, 2008, assessing \$250 in administrative penalties with \$50 deferred.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator, at (512) 239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TOTAL PETROCHEMICALS USA, INC., Docket No. 2007-1879-IWD-E on May 13, 2008, assessing \$37,800 in administrative penalties with \$7,560 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrew Hunt, Enforcement Coordinator, at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Hooks, Docket No. 2007-1889-MWD-E on May 13, 2008, assessing \$6,180 in administrative penalties with \$1,236 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator, at (254) 761-3048, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Leisure Pools USA Trading, Inc., Docket No. 2007-1929-AIR-E on May 13, 2008, assessing \$7,500 in administrative penalties with \$1,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator, at (512) 239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kerr Materials, L.P., Docket No. 2007-1963-WQ-E on May 13, 2008, assessing \$2,000 in administrative penalties with \$400 deferred.

Information concerning any aspect of this order may be obtained by contacting Libby Hogue, Enforcement Coordinator, at 239-1165, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Petrochemicals LP, Docket No. 2007-2045-AIR-E on May 13, 2008, assessing \$10,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator, at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hilco United Services, Inc., Docket No. 2008-0022-PWS-E on May 13, 2008, assessing \$1,387 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator, at (210) 403-4077, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Dixie Gas Station, Inc. dba Dixie Gas Station, Docket No. 2008-0025-PST-E on May 13, 2008, assessing \$3,500 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator, at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Koyote Ranch-Bandera Unit L.P. dba Koyote Mercantile, Docket No. 2006-0641-PST-E on May 13, 2008, assessing \$875 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator, at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Edward Longoria, Docket No. 2007-1948-WOC-E on May 13, 2008, assessing \$210 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator, at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Tommy Joe Thomas dba Deer Trail Mobile Home Park, Docket No. 2006-1654-PWS-E on May 12, 2008, assessing \$1,494 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anita Keese, Enforcement Coordinator, at (956) 430-6034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200802655

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 21, 2008



Notice of Meeting on July 10, 2008, in Tenaha, Shelby County, Texas Concerning the Shelby Wood Specialty, Inc. Proposed State Superfund Site

The purpose of the meeting is to obtain public input and information concerning the proposal to delete the site from its proposed-for-listing status on the state Superfund registry.

The executive director (ED) of the Texas Commission on Environmental Quality (TCEQ or commission) is issuing a notice of intent to delete the Shelby Wood Specialty, Inc. proposed state Superfund site (the Site) from its proposed-for-listing status on the state registry. The state registry is the list of state Superfund sites that may constitute an im-

minent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment. The commission is proposing this deletion because the site has been accepted into the Voluntary Cleanup Program.

The site, including all land, structures, appurtenances, and other improvements, consists of approximately 27.4 acres and is located at 3295 United States Highway 84 East, in Tenaha, Shelby County, Texas. The site also includes any areas where hazardous substances have come to be located as a result, either directly or indirectly, of releases of hazardous substances from the site.

The records indicate that the site operated as a wood treating facility from approximately the mid-1970s to the mid-1980s. The facility treated wood with copper chromium arsenate (CCA). The facility used four to five acres of the 27.4-acre property. Rails at the facility led to a pressure vessel in which CCA was used to treat wood. The pressure vessel and chemical tanks have been removed from the site and the rails have been covered with concrete. An investigation in 1989 indicated elevated levels of chromium, copper and arsenic. On August 23, 2005, the TCEQ conducted soil sampling from one-to eight-inch depths at the site. The sampling results indicated releases of arsenic, cadmium, chromium, copper, magnesium, manganese, sodium, zinc and other chemicals at the site at levels greater than three times those that occur naturally in the environment. Hazardous substances have also been detected in sediment samples taken from wetlands located 0.8 miles downstream from the site.

The site was originally proposed for listing on April 6, 2007 in the *Texas Register* (32 TexReg 2038). The site was proposed to the state registry with a commercial/industrial land use designation in accordance with Texas Risk Reduction Program regulations 30 TAC §350.53.

The site has been accepted into the TCEQ Voluntary Cleanup Program and is therefore eligible for deletion from the state registry as provided by 30 TAC §335.344(c).

In accordance with 30 TAC §335.344(b), the commission will hold a public meeting to receive comments on this proposed deletion. This meeting will not be a contested case hearing within the meaning of Texas Government Code, Chapter 2001. The meeting will be held on July 10, 2008, at 7:00 p.m., at the Tenaha City Hall, located at 122 North Center, Tenaha, Texas.

All persons desiring to make comments regarding the proposed deletion of the site may do so prior to or at the public meeting. All comments submitted prior to the public meeting must be received by 5:00 p.m. on July 9, 2008, and should be sent in writing to Sugam Shrestha, Project Manager, TCEQ, Remediation Division, MC 136, P.O. Box 13087, Austin, Texas 78711-3087 or by facsimile to (512) 239-2303. The public comment period for this action will end at the close of the public meeting of July 10, 2008.

A portion of the record for the site, including documents pertinent to the ED's proposed deletion, is available for review during regular business hours at the Fannie Brown Booth Memorial Library, 619 Tenaha Street, Center, Texas, telephone number (936) 598-5522. The complete public file may be obtained during regular business hours at the commission's Records Management Center, Building E, First Floor, Records Customer Service, MC 199, 12100 Park 35 Circle, Austin, Texas 78753, (800) 633-9363 or (512) 239-2920. Fees are charged for photocopying file information. Parking for persons with disabilities is available on the east side of Building D, convenient to access ramps that are between Buildings D and E.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the meeting should con-

tact the agency at (800) 633-9363 or (512) 239-3844. Requests should be made as far in advance as possible.

For further information about the public meeting, please call Crystal Taylor at (800) 633-9363, extension 3844.

TRD-200802623

Mary R. Risner

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: May 20, 2008



## Notice of Water Quality Applications

The following notices were issued during the period of May 15, 2008 through May 22, 2008.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

### INFORMATION SECTION

BRAZORIA COUNTY MUNICIPAL UTILITY DISTRICT NO 21 has applied for a renewal of TPDES Permit No. WQ0014222001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The facility is located at 13717A Highway 6, approximately 2 miles southeast of the intersection of State Highway 6 and Farm-to-Market Road 521 in Brazoria County, Texas.

CITY OF CLEVELAND has applied for a renewal of TPDES Permit No. WQ0010766002 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 950,000 gallons per day. The facility is located east of the City of Cleveland, approximately 1.8 miles northeast of the intersection of U.S. Highway 59 and State Highway 321/105 in Liberty County, Texas.

CITY OF JACKSBORO has applied to the TCEQ for a renewal with changes of TPDES Permit No. WQ0010994001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 700,000 gallons per day. The changes consist of routing the effluent through a series of constructed ponds located on the applicant's property. The facility is located approximately 1,500 feet north of U.S. Highway 281 and approximately 4,600 feet west of State Highway 148 in the City of Jacksboro in Jack County, Texas.

CITY OF PASADENA has applied for a renewal of TPDES Permit No. WQ0010053003 which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 10,000,000 gallons per day. The facility is located approximately 100 yards south of Spencer Highway and adjacent to the west edge of Denkman Road in Harris County, Texas.

CITY OF PEARLAND has applied for a renewal of TPDES Permit No. WQ0012295001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 950,000 gallons per day. The facility is located at 3711 Soho Drive, approximately 2,200 feet south of Clear Creek, and approximately 8,000 feet northeast of the intersection of State Highway 288 and Hughes Ranch Road in Brazoria County, Texas.

CITY PUBLIC SERVICE OF SAN ANTONIO which operates the V. H. Braunig Steam Electric Station, has applied for a major amendment to TPDES Permit No. WQ0001515000 to authorize an increase in the

discharge of once-through cooling water, previously monitored effluents (PME), and storm water runoff from a daily average flow not to exceed 1,220,000,000 gallons per day to a daily average flow not to exceed 1,320,000,000 gallons per day via Outfall 001; discharge of low volume waste and storm water runoff on an intermittent and flow variable basis via Outfall 007, and the increase in the upper pH limits from 9.0 to 10.0 standard units at Outfall 007. The current permit authorizes the discharge of once-through cooling water, previously monitored effluents (PME) (low volume waste, metal cleaning waste, treated domestic wastewater, and storm water runoff at a daily average flow not to exceed 1,220,000,000 gallons per day via Outfall 001; storm water runoff on intermittent and flow variable basis via Outfalls 003, 006, 007, 008, 011, 013, and 015; and storm water runoff and car wash water on an intermittent and flow variable basis via Outfall 012. The facility is located at 15290 Streich Road, approximately two miles east of Interstate Highway 37 South, adjacent to Braunig Lake, approximately 2.75 miles northwest of the City of Elmendorf and 17 miles southeast of the City of San Antonio, Bexar County, Texas.

CITY OF WACO which operate the City of Waco Municipal Separate Storm Sewer System (MS4), have applied for a renewal of NPDES Permit No. TXS002001. The draft permit authorizes storm water point source discharges to surface water in the state from the City of Waco MS4. The permit will be issued as TPDES Permit No. WQ0004774000. The MS4 is located within the corporate boundary of the City of Waco, in McLennan County, Texas.

CITY OF ZAVALLA has applied for a major amendment to TPDES Permit No. WQ0013871001 to authorize the re-classification of an existing constructed wetland as a third stabilization pond. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 130,000 gallons per day. The facility is located approximately 0.5 mile west and 1.0 mile south of the intersection of State Highways 69 and 63, and southwest of the City of Zavalla in Angelina County, Texas

COOK COMPOSITES AND POLYMERS CO which operates a plant manufacturing polyester resins, has applied for a major amendment to TPDES Permit No. WQ0002073000 to increase the effluent limitations for total aluminum at Outfall 001. The current permit authorizes the discharge of noncontact cooling water, boiler blowdown, and storm water at a daily average flow not to exceed 110,000 gallons per day via Outfall 001; and storm water on an intermittent and flow variable basis via Outfall 002. The facility is located 4.0 miles east of the City of Marshall, 1.0 mile northeast of the intersection of State Highway 80 and Farm-to-Market Road 1998, on the north side of Farm-to-Market Road 1998, Harrison County, Texas.

ETHYL CORPORATION which operates a facility that produces and distributes fuel and lube oil additives, has applied for a renewal of TPDES Permit No. WQ0003890000, which authorizes the discharge of storm water on an intermittent and variable basis. The facility is located at 1000 N. South Avenue, approximately two miles north of State Highway 225 at the intersection of N. South Avenue and the Houston Ship Channel (Buffalo Bayou), Harris County, Texas.

FORESTAR USA REAL ESTATE GROUP INC has applied for a new permit, Proposed Permit No. WQ0014824001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 125,000 gallons per day via public access subsurface drip irrigation system with a minimum area of 29 acres. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site will be located at 2303 West Highway 290, Dripping Springs, in Hays County, Texas. The wastewater treatment facility and disposal site will be located in the drainage basin of Onion Creek in Segment No. 1427 of the Colorado River Basin.

HARRIS COUNTY FRESH WATER SUPPLY DISTRICT NO 6 has applied for a renewal of TPDES Permit No. WQ0010184001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day. The facility is located at the intersection of DeZavalla Road and Elsbeth Road in the City of Channelview in Harris County, Texas.

LAZY RIVER IMPROVEMENT DISTRICT has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. WQ0011820001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located approximately 7,500 feet southeast of the intersection of Interstate Highway 45 and Farm-to-Market Road 1488, south of the City of Conroe in Montgomery County, Texas.

MONARCH UTILITIES I L.P. has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. WQ0012478001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. The facility is located 300 feet south of Farm-to-Market Road 565 and two miles east of the intersection of Farm-to-Market Road 565 and Farm-to-Market Road 1405 in Chambers County, Texas.

NI AMERICA TEXAS DEVELOPMENT LLC has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014879001 to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day. The facility will be located approximately 1 mile northwest of the intersection of State Highway 6 and Farm-to-Market Road 2154 in Brazos County, Texas.

SEQUA CORPORATION which operates Precoat Metals, has applied for a renewal of TPDES Permit No. WQ0002160000, which authorizes the discharge of previously monitored effluents at a daily average flow not to exceed 45,000 gallons per day via Outfall 001; treated process wastewater, utility wastewater, and storm water at a daily average flow not to exceed 30,000 gallons per day via Outfall 101; treated domestic wastewater at a daily average flow not to exceed 2,000 gallons per day via Outfall 201. The facility is located at 16402 Jacintoport Boulevard in the Jacintoport Industrial Park, approximately three miles south of the Town of Channelview, Harris County, Texas.

ZACHRY CONSTRUCTION CORPORATION SAN ANTONIO, which operates a facility for the maintenance and repair of construction equipment, has applied for a renewal of TPDES Permit No. WQ0004117000, which authorizes the discharge of storm water on an intermittent and variable basis. The facility is located at 5720 Logwood Avenue at West Harding Boulevard in the City of San Antonio, Bexar County, Texas.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us). Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200802654

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 21, 2008

## Texas Ethics Commission

List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports, or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Robbie Douglas at (512) 463-5800 or (800) 325-8506.

### Deadline: 30-Day Pre-Election Report due October 10, 2006

Steve Patrick Franklin, 3700 McCann Road #109, Longview, Texas 75605

### Deadline: 8-Day Pre-Election Report due October 30, 2006

Steve P. 'Patrick' Franklin, 3700 McCann Road #109, Longview, Texas 75605

### Deadline: Semiannual Report due January 15, 2008

Juan J. Maldonado, 105 E. Expressway 83, Suite F, Pharr, Texas 78577-6560

### Deadline: 30-Day Pre-Election Report due February 4, 2008

Albert Edwards, 3108 S. MacGregor Way, Houston, Texas 77021-1103

Lyda Ness-Garcia, 609 Myrtle Ave., Suite 102, El Paso, Texas 79901-2568

### Deadline: 8-Day Pre-Election Report due February 25, 2008

Fausto Sosa, 101 W. Hillside Rd., Suite 11C, Laredo, Texas 78041

Carla C. Vela, 3819 Briar Haven, San Antonio, Texas 78247-2717

### Deadline: Monthly Report due February 5, 2008

Phyllis A. Traylor, Montgomery County Law Enforcement Association, P.O. Box 2545, Conroe, Texas 77305-2545

Edward Kaleta, Humana Inc. Texas PAC, 1776 Eye St. NW, Suite 890, Washington, DC 20006

### Deadline: Lobby Activities Report due January 10, 2008

Anita Y. Bradberry, 3737 Executive Center Dr., Ste. 268, Austin, Texas 78731-1633

Randal Kuykendall, 6200 La Calma Dr., Ste. 200, Austin, Texas 78752-3800

### Deadline: Personal Financial Statement due February 13, 2006

Steve Patrick Franklin, 3700 McCann Rd #109, Longview, Texas 75605

### Deadline: Personal Financial Statement due February 29, 2008

Leslie Escareno, 7 Medical Dr., Brownsville, Texas 78520

### Deadline: Personal Financial Statement due March 3, 2008

Curtis Virgil Flowers, 4361 Harvest Lane, Houston, Texas 77004

TRD-200802520

David Reisman

Executive Director

Texas Ethics Commission

Filed: May 14, 2008

## Texas Facilities Commission

Request for Proposals #303-8-11691

The Texas Facilities Commission (TFC), on behalf of the Department of Family and Protective Services (DFPS), announces the issuance of Request for Proposals (RFP) #303-8-11691. TFC seeks a ten (10) year

lease of approximately 9,175 square feet of office space in Athens, Henderson County, Texas.

The deadline for questions is June 6, 2008 and the deadline for proposals is June 13, 2008 at 3:00 p.m. The award date is July 16, 2008. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TFC Purchaser Sandy Williams at (512) 475-0453. A copy of the RFP may be downloaded from the Electronic State Business Daily at [http://esbd.cpa.state.tx.us/bid\\_show.cfm?bidid=76677](http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=76677).

TRD-200802625

Kay Molina

General Counsel

Texas Facilities Commission

Filed: May 20, 2008

## Department of Family and Protective Services

### Strategic Plan for Child Abuse and Neglect Prevention Services

The Texas Department of Family and Protective Services (DFPS), in consultation with the Interagency Coordinating Council (ICC) for Building Healthy Families, as directed by House Bill (HB) 662, 80th Legislative Session, must develop a strategic plan for child abuse and neglect prevention services. DFPS must submit the plan to the Texas Legislature no later than December 1, 2008. Also by the same date, the ICC must develop a report which will include its recommendations regarding the strategic plan's implementation. Working in collaboration with the ICC, DFPS's Division of Prevention and Early Intervention (PEI) has developed a preliminary draft version of the strategic plan. Before proceeding with drafting a final version, DFPS and the ICC seek the public's input on the existing draft.

The PEI Division, in conjunction with the ICC, will hold a public hearing to solicit public input on Monday, June 16, 2008, in the Public Hearing Room (125) of the John H. Winters Building, 701 West 51st Street, Austin, Texas. The hearing will begin at 1:30 p.m. and end after the last public testimony is presented, but not later than 4:30 p.m. Commenters can view and download a copy of the draft version starting on June 9, 2008, at [http://www.dfps.state.tx.us/About/News/2008/2008-05-30\\_ICC.asp](http://www.dfps.state.tx.us/About/News/2008/2008-05-30_ICC.asp). The PEI Division and ICC request that testimony focus on the effectiveness of the plan in reaching the two goals set out in HB 662: (1) Reduce the need of the state and of its political subdivisions for services addressing child maltreatment; and (2) Transition the state and its political subdivisions to a system that promotes child abuse and neglect prevention services in order to use cost savings to increase prevention service funding in the future.

To ensure an opportunity for all who wish to present, persons attending the public hearing should limit their presentations to ten minutes or less. Time limits may be adjusted at the hearing based on the actual attendance. Those wishing to present testimony should register on-line with DFPS prior to the hearing date by accessing an electronic registration form at [http://www.dfps.state.tx.us/About/News/2008/2008-05-30\\_ICC.asp](http://www.dfps.state.tx.us/About/News/2008/2008-05-30_ICC.asp). Speakers who fail to register prior to the hearing may register in person at the sign-in table the day of the hearing.

In lieu of public testimony, written comments may be submitted via e-mail to [ICC@dfps.state.tx.us](mailto:ICC@dfps.state.tx.us) or mailed to DFPS-PEI, Attention: Pablo Bastida, P.O. Box 149030, Mail Code Y-987, Austin, Texas 78714-9030. Comments must be received no later than June 23, 2008.

Persons with disabilities planning to attend this meeting who need auxiliary aids or services may contact Pablo Bastida at (512) 929-6975, no later than June 11, 2008, so that appropriate arrangements can be made. A computer with a CD drive (requires Windows Office 2000 or less) and Internet connection, as well as a projector, will be available to presenters at the public hearing. Presenters requiring other audio or visual equipment for presentations should contact Pablo Bastida at (512) 929-6975 no later than June 11, 2008.

TRD-200802649

Gerry Williams

General Counsel

Department of Family and Protective Services

Filed: May 21, 2008

## Texas Health and Human Services Commission

### Notice of Public Hearing on Proposed Medicaid Payment Rates

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on June 13, 2007, at 2:30 p.m. to receive public comment on proposed rates for the following programs and services:

Community Based Alternatives and Integrated Care Management - Assisted Living/Residential Care and Personal Assistant Services; Community Care for the Aged and Disabled Residential Care; Community Living Assistance and Support Services - Habilitation; Consolidated Waiver Program - Personal Assistance Services and Habilitation; Day Activity and Health Services; Deaf-Blind with Multiple Disabilities Waiver - Chore and Habilitation Services; Medically Dependent Children Program - Personal Assistant Services; Personal Care Services in Texas Health Steps - Comprehensive Care Program Only (PCS); Primary Home Care; and Associated Consumer Directed Services.

The Texas Department of Aging and Disability Services (DADS) operates all of these programs except PCS; HHSC operates PCS.

The hearing will be held in compliance with Human Resources Code §32.0282 and 1 Texas Administrative Code (TAC) §355.105(g), which require public notice and hearings on proposed Medicaid reimbursements. The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. Persons requiring Americans with Disability Act (ADA) accommodation or auxiliary aids or services should contact Kimbra Rawlings by calling (512) 491-1174, at least 72 hours prior to the hearing so appropriate arrangements can be made.

**Proposal.** HHSC proposes to adjust the rates for the programs and services listed above to account for changes in economic factors such as the new federal minimum wage. The minimum wage will increase \$0.70 from the current \$5.85 per hour to \$6.55 per hour on July 24, 2008. The proposed rates will be effective from August 1, 2008, through August 31, 2009.

**Methodology and justification.** The proposed rates were determined in accordance with the rate setting methodology codified at 1 TAC Chapter 355, §355.109, relating to Adjusting Reimbursement When New Legislation, Regulations or Economic Factors Affect Cost. The proposed rate increases reflect changes in economic factors such as the new federal minimum wage level.

**Briefing Package.** A briefing package describing the proposed payment rates will be available on May 30, 2008. Interested parties may obtain a copy of the briefing package prior to the hearing by contact-

ing Kimbra Rawlings by telephone at (512) 491-1174; by fax at (512) 491-1998; or by e-mail at [Kimbra.Rawlings@hhsc.state.tx.us](mailto:Kimbra.Rawlings@hhsc.state.tx.us). The briefing package also will be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Kimbra Rawlings, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Kimbra Rawlings at (512) 491-1998; or by e-mail to [Kimbra.Rawlings@hhsc.state.tx.us](mailto:Kimbra.Rawlings@hhsc.state.tx.us). In addition, written comments may be sent by overnight mail or hand delivered to Kimbra Rawlings, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

TRD-200802579

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: May 16, 2008



#### Notice of Public Hearing on Proposed Medicaid Payment Rates

**Hearing.** The Texas Health and Human Services Commission will conduct a public hearing on June 17, 2008, at 2:00 p.m. to receive public comment on the proposed Medicaid payment rates for 16 Bariatric Surgery procedure codes and one anesthesia procedure code. These changes are associated with Medicaid medical policy changes. The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Title 1 of the Texas Administrative Code (TAC), §355.201(e) - (f), which require public notice and hearings on proposed Medicaid reimbursements.

**Proposal.** The proposed rates for 16 Bariatric Surgery procedure codes and one anesthesia procedure codes are proposed to be effective July 1, 2008.

**Methodology and justification.** The proposed payment rates are calculated in accordance with 1 TAC §355.8085, which addresses the reimbursement methodology for physicians and certain other practitioners, including surgery and assistant surgery services; and 1 TAC §355.8121, which addresses the reimbursement methodology for Ambulatory Surgical Centers.

**Briefing Package.** A briefing package describing the proposed payment rates will be available on or after June 3, 2008. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Kimbra Rawlings by telephone at (512) 491-1174; by fax at (512) 491-1998; or by e-mail at [Kimbra.Rawlings@hhsc.state.tx.us](mailto:Kimbra.Rawlings@hhsc.state.tx.us). The briefing package also will be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Irene Cantu, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Kimbra Rawlings at (512) 491-1174; or by e-mail to [Kimbra.Rawlings@hhsc.state.tx.us](mailto:Kimbra.Rawlings@hhsc.state.tx.us). In addition, written comments may be sent by overnight mail or hand delivered to Kimbra Rawlings, HHSC, Rate Analysis, Mail Code H-400,

Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons requiring Americans with Disability Act (ADA) accommodation or auxiliary aids or services should contact Kimbra Rawlings by calling (512) 491-1174, at least 72 hours prior to the hearing so appropriate arrangements can be made.

TRD-200802616

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: May 20, 2008



#### Notice of Public Hearing on Proposed Medicaid Payment Rates

**Hearing.** The Texas Health and Human Services Commission will conduct a public hearing on June 17, 2008, at 2:00 p.m. to receive public comment on the proposed Medicaid payment rates for Obstetrical Sonogram Medical Services procedure codes. The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. The hearing will be held in compliance with 1 TAC §355.105(g), which requires public hearings on proposed Medicaid reimbursements.

**Proposal.** The payment rates for obstetrical sonogram services are proposed to be implemented effective September 1, 2008.

**Methodology and justification.** The proposed payment rates are calculated in accordance with 1 TAC §355.8085, which addresses the reimbursement methodology for physicians and certain other practitioners, 1 TAC §355.8081, which addresses the reimbursement methodology for radiology services, and the specific fee guidelines published in Section 2.2.1.1 of the 2008 Texas Medicaid Provider Procedures Manual. Rule §355.8085 requires HHSC to review the fees for individual services at least every two years.

**Briefing Package.** A briefing package describing the proposed payment rates will be available on or after May 30, 2008. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Kimbra Rawlings by telephone at (512) 491-1174; by fax at (512) 491-1998; or by e-mail at [kimbrawlings@hhsc.state.tx.us](mailto:kimbrawlings@hhsc.state.tx.us). The briefing package also will be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of or in addition to oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Kimbra Rawlings, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Kimbra Rawlings at (512) 491-1998; or by e-mail to [kimbrawlings@hhsc.state.tx.us](mailto:kimbrawlings@hhsc.state.tx.us). In addition, written comments may be sent by overnight mail or hand delivered to Kimbra Rawlings, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons requiring ADA accommodation or auxiliary aids or services should contact Kimbra Rawlings by calling (512) 491-1174 at least 72 hours prior to the hearing so appropriate arrangements can be made.

TRD-200802617

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: May 20, 2008



#### Notice of Public Hearing on Proposed Medicaid Payment Rates

**Hearing.** The Texas Health and Human Services Commission will conduct a public hearing on June 17, 2008, at 2:00 p.m. to receive public comment on the proposed Medicaid payment rates for Breast Reconstruction Medical Services procedure code S2068. The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Title 1 of the Texas Administrative Code (TAC), §355.201(e) - (f), which require public notice and hearings on proposed Medicaid reimbursements.

**Proposal.** The payment rates to be discussed are proposed to be effective July 1, 2008.

**Methodology and justification.** The proposed payment rates are calculated in accordance with 1 TAC §355.8085, which addresses the reimbursement methodology for physicians and certain other practitioners.

**Briefing Package.** A briefing package describing the proposed payment rates will be available on or after June 3, 2008. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Kimbra Rawlings by telephone at (512) 491-1174; by fax at (512) 491-1998; or by e-mail at Kimbra.Rawlings@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Kimbra Rawlings, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Kimbra Rawlings at (512) 491-1998; or by e-mail to Kimbra.Rawlings@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Kimbra Rawlings, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons requiring Americans with Disability Act (ADA) accommodation or auxiliary aids or services should contact Kimbra Rawlings by calling (512) 491-1174, at least 72 hours prior to the hearing so appropriate arrangements can be made.

TRD-200802618

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: May 20, 2008



#### Notice of Public Hearing on Proposed Medicaid Payment Rates

**Hearing.** The Texas Health and Human Services Commission will conduct a public hearing on June 17, 2008, at 2:00 p.m. to receive public comment on the proposed Medicaid payment rates for medical procedure codes 51784 and 51785 for electromyography services and nerve conduction studies. The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Title 1 of the Texas

Administrative Code (TAC), §355.201(e) - (f), which require public notice and hearings on proposed Medicaid reimbursements.

**Proposal.** The payment rates to be discussed are proposed to be effective July 1, 2008.

**Methodology and justification.** The proposed payment rates are calculated in accordance with 1 TAC §355.8081, which addresses the reimbursement methodology for laboratory services.

**Briefing Package.** A briefing package describing the proposed payment rates will be available on or after June 5, 2008. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Kimbra Rawlings by telephone at (512) 491-1174; by fax at (512) 491-1998; or by e-mail at Kimbra.Rawlings@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Kimbra Rawlings, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Kimbra Rawlings at (512) 491-1998; or by e-mail to Kimbra.Rawlings@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Kimbra Rawlings, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons requiring Americans with Disability Act (ADA) accommodation or auxiliary aids or services should contact Kimbra Rawlings by calling (512) 491-1174, at least 72 hours prior to the hearing so appropriate arrangements can be made.

TRD-200802619

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: May 20, 2008



#### Notice of Public Hearing on Proposed Medicaid Payment Rates

**Hearing.** The Texas Health and Human Services Commission will conduct a public hearing on June 17, 2008, at 2:00 p.m. to receive public comment on the proposed Medicaid payment rates for medical services procedure codes 70557, 70558, and 70559 related to Computed Tomography and Magnetic Resonance Imaging (CT/MRI) services. The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Texas Administrative Code (TAC) Title 1, §355.201(e) - (f), which require public notice and hearings on proposed Medicaid reimbursements.

**Proposal.** The CT/MRI medical services payment rates to be discussed are proposed to be effective July 1, 2008.

**Methodology and justification.** The proposed payment rates are calculated in accordance with 1 TAC §355.8085, which addresses the reimbursement methodology for physicians and certain other practitioners; 1 TAC §355.8081, which addresses the reimbursement methodology for radiology services; and the specific fee guidelines published in Section 2.2.1.1 of the 2008 Texas Medicaid Provider Procedures Manual. 1 TAC §355.8085 requires HHSC to review the fees for individual services at least every two years.



**Briefing Package.** A briefing package describing the proposed payment rates will be available on or after June 3, 2008. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Kimbra Rawlings by telephone at (512) 491-1174; by fax at (512) 491-1998; or by e-mail at Kimbra.Rawlings@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Kimbra Rawlings, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Kimbra Rawlings at (512) 491-1998; or by e-mail to Kimbra.Rawlings@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Kimbra Rawlings, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons requiring Americans with Disability Act (ADA) accommodation or auxiliary aids or services should contact Kimbra Rawlings by calling (512) 491-1174, at least 72 hours prior to the hearing so appropriate arrangements can be made.

TRD-200802620

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: May 20, 2008



#### Notice of Public Hearing on Proposed Medicaid Payment Rates

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on June 17, 2008, at 2:00 p.m. to receive public comment on the proposed Medicaid payment rates for 22 new procedure codes resulting from the 2007 Healthcare Common Procedure Coding System (HCPCS) annual update. The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Title 1 of the Texas Administrative Code (TAC), §355.201 (e) - (f), which require public notice and hearings on proposed Medicaid reimbursements.

**Proposal.** The 22 procedure codes were added as new benefits under the Texas Medicaid Program. The 22 new procedure codes include ten clinical laboratory, two anesthesia, one genetic, and nine dental services procedure codes associated with the 2007 HCPCS annual update. The proposed payment rates are proposed to be effective retroactively to January 1, 2007.

**Methodology and justification.** The proposed rates for clinical laboratory services are calculated in accordance with 1 TAC §355.8610; for anesthesia and genetic services, in accordance with 1 TAC §355.8085; and for dental services, in accordance with 1 TAC §355.8441(11) and 1 TAC §355.455(b).

**Briefing Package.** A briefing package describing the proposed payment rates will be available on or after May 27, 2008. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Kimbra Rawlings by telephone at (512) 491-1174; by fax at (512) 491-1998; or by e-mail at Kimbra.Rawlings@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Kimbra Rawlings, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Kimbra Rawlings at (512) 491-1998; or by e-mail to Kimbra.Rawlings@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Kimbra Rawlings, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons requiring Americans with Disability Act (ADA) accommodation or auxiliary aids or services should contact Kimbra Rawlings by calling (512) 491-1174, at least 72 hours prior to the hearing so appropriate arrangements can be made.

TRD-200802621

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: May 20, 2008



#### Notice of Public Hearing on Proposed Medicaid Payment Rates

**Hearing.** The Texas Health and Human Services Commission will conduct a public hearing on June 17, 2008, at 2:00 p.m. to receive public comment on the proposed Medicaid payment rates for Hospital Beds and Equipment under the Home Health Policy, procedure codes E0188, synthetic sheepskin pad; E0189, lambswool sheepskin pad; and E0280, any type bed cradle. The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Title 1 of the Texas Administrative Code (TAC), §355.201(e) - (f), which require public notice and hearings on proposed Medicaid reimbursements.

**Proposal.** The proposed effective date for the Medicaid fees for procedure codes E0188, a synthetic sheepskin pad; E0189, lambswool sheepskin pad; and E0280, any type bed cradle, is July 1, 2008, along with associated medical policy changes.

**Methodology and justification.** The proposed payment rates are calculated in accordance with 1 TAC §355.8021(c), which addresses the reimbursement methodology for durable medical equipment as a home health service, and 1 TAC §355.8441(3), relating to the reimbursement methodology for durable medical equipment under the Early and Periodic, Screening, Diagnosis, and Treatment (EPSDT) Program (known in Texas as THSteps).

**Briefing Package.** A briefing package describing the proposed payment rates will be available on or after June 2, 2008. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Kimbra Rawlings by telephone at (512) 491-1174; by fax at (512) 491-1998; or by e-mail at Kimbra.rawlings@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Kimbra Rawlings, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Kimbra Rawlings at (512) 491-1998; or by e-mail to Kimbra.rawlings@hhsc.state.tx.us. In

addition, written comments may be sent by overnight mail or hand delivered to Kimbra Rawlings, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons requiring Americans with Disability Act (ADA) accommodation or auxiliary aids or services should contact Kimbra Rawlings by calling (512) 491-1174, at least 72 hours prior to the hearing so appropriate arrangements can be made.

TRD-200802622

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: May 20, 2008



#### Notice of Public Hearing on Proposed Medicaid Payment Rates

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on June 17, 2008, at 2:00 p.m. to receive public comment on the proposed Medicaid payment rates for Hearing Aids. The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Title 1 of the Texas Administrative Code (TAC), §355.201(e) - (f), which require public notice and hearings on proposed Medicaid reimbursements.

**Proposal.** The proposed rates for hearing aids are a change from manual pricing to fee schedule fees per procedure code, are calculated in accordance with 1 TAC §355.8141, and are proposed to be effective July 1, 2008.

**Methodology and justification.** The proposed payment rates for hearing aids are calculated in accordance with 1 TAC §355.8141.

**Briefing Package.** A briefing package describing the proposed payment rates will be available on or after May 27, 2008. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Kimbra Rawlings by telephone at (512) 491-1174; by fax at (512) 491-1998; or by e-mail at Kimbra.Rawlings@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Kimbra Rawlings, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Kimbra Rawlings at (512) 491-1998; or by e-mail to Kimbra.Rawlings@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Kimbra Rawlings, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons requiring ADA accommodation or auxiliary aids or services should contact Kimbra Rawlings by calling (512) 491-1174 at least 72 hours prior to the hearing so appropriate arrangements can be made.

TRD-200802624

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: May 20, 2008



#### Notice of Public Hearing on Proposed Medicaid Payment Rates

**Hearing.** The Texas Health and Human Services Commission will conduct a public hearing on June 17, 2008, at 2:00 p.m. to receive public comment on the proposed Medicaid payment rates for Osteogenic Stimulation procedure codes E0747, Osteogenesis stimulator, electrical, noninvasive, other than spinal applications; E0748, Osteogenesis stimulator, electrical, noninvasive, spinal applications; E0749, Osteogenesis stimulator, electrical, surgically implanted; E0760, Osteogenesis stimulator, low intensity ultrasound, noninvasive; and 20979\*. The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Title 1 of the Texas Administrative Code (TAC), §355.201(e) - (f), which require public notice and hearings on proposed Medicaid reimbursements.

**Proposal.** The proposed effective date for the Medicaid payment rates for Osteogenic Stimulation procedure codes E0747, E0748, E0749, E0760, and 20979 is July 1, 2008.

**Methodology and justification.** The proposed payment rates for E0747, E0748, E0749, and E0760 were calculated in accordance with 1 TAC §355.8021(c), which addresses the reimbursement methodology for durable medical equipment as a home health service, and 1 TAC §355.8441(3), relating to the reimbursement methodology for durable medical equipment under the Early and Periodic, Screening, Diagnosis, and Treatment (EPSDT) Program (known in Texas as THSteps).

The proposed payment rate for procedure code 20979 was determined in accordance with the reimbursement methodology outlined in 1 TAC §355.8085, which addresses the reimbursement methodology for physicians and certain other practitioners.

**Briefing Package.** A briefing package describing the proposed payment rates will be available on or after June 2, 2008. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Kimbra Rawlings by telephone at (512) 491-1174; by fax at (512) 491-1998; or by e-mail at Kimbra.rawlings@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Kimbra Rawlings, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Kimbra Rawlings at (512) 491-1998; or by e-mail to Kimbra.rawlings@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Kimbra Rawlings, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons requiring Americans with Disability Act (ADA) accommodation or auxiliary aids or services should contact Kimbra Rawlings by calling (512) 491-1174, at least 72 hours prior to the hearing so appropriate arrangements can be made.

**\*Required Notice:** The five character codes included in this notice are obtained from the Current Procedural Terminology (CPT®), copyright 2006 by the American Medical Association (AMA). CPT is developed by the AMA as a listing of descriptive terms and five character identifying codes and modifiers for reporting medical services and procedures performed by physicians. The responsibility

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TRD-200802626

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: May 20, 2008



#### Notice of Public Hearing on Proposed Medicaid Payment Rates

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on June 17, 2008, at 2:00 p.m. to receive public comment on the proposed Medicaid payment rates for Private Duty Nursing (PDN) Specialized Nursing Services for Medicaid clients under the age of 21 with ventilators or tracheostomies. The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Title 1 of the Texas Administrative Code (TAC), §355.201(e) - (f), which require public notice and hearings on proposed Medicaid reimbursements.

**Proposal.** The proposed new rates for the PDN Specialized Nursing Services delivered by home health agency registered nurses (RNs), home health agency licensed practical nurses/licensed vocational nurses (LPNs/LVNs), independently-enrolled RNs, and independently-enrolled LPNs/LVNs are proposed to be added to pay higher rates for specialized nursing services delivered to Medicaid clients under the age of 21 with ventilators or tracheostomies, are calculated in accordance with 1 TAC §355.8441(4), and are proposed to be effective July 1, 2008.

**Methodology and justification.** The proposed payment rates for PDN Specialized Nursing Services are calculated in accordance with 1 TAC §355.8441(4).

**Briefing Package.** A briefing package describing the proposed payment rates will be available on or after May 27, 2008. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Kimbra Rawlings by telephone at (512) 491-1174; by fax

at (512) 491-1998; or by e-mail at Kimbra.Rawlings@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Kimbra Rawlings, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Kimbra Rawlings at (512) 491-1998; or by e-mail to Kimbra.Rawlings@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Kimbra Rawlings, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons requiring ADA accommodation or auxiliary aids or services should contact Kimbra Rawlings by calling (512) 491-1174 at least 72 hours prior to the hearing so appropriate arrangements can be made.

TRD-200802627

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: May 20, 2008



#### Notice of Public Hearing on Proposed Medicaid Payment Rates

**Hearing.** The Texas Health and Human Services Commission will conduct a public hearing on June 13, 2007, at 1:30 p.m. to receive public comment on proposed rates for the Nursing Facility Program operated by the Texas Department of Aging and Disability Services (DADS).

The hearing will be held in compliance with Human Resources Code §32.0282 and Texas Administrative Code (TAC) Title 1, §355.105(g), which require public notice and hearings on proposed Medicaid reimbursements. The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. Persons requiring Americans with Disability Act (ADA) accommodation or auxiliary aids or services should contact Kimbra Rawlings by calling (512) 491-1174, at least 72 hours prior to the hearing so appropriate arrangements can be made.

**Proposal.** HHSC proposes to increase rates for nursing facility services for all providers under the Nursing Facility program. The proposed rates were determined in accordance with the rate setting methodologies listed below under "Methodology and justification." The proposed payment rates for the Nursing Facility program, which will be effective September 1, 2008, are as follows.

Base Rates by RUG (Resource Utilization Group) class:

<b>RUG</b>	<b>RUG Base Rate</b>
RAD	\$191.22
RAC	\$168.11
RAB	\$157.53
RAA	\$137.75
SE3	\$230.01
SE2	\$194.25
SE1	\$167.46
SSC	\$163.47
SSB	\$154.13
SSA	\$153.89
CC2	\$132.06
CC1	\$124.72
CB2	\$120.65
CB1	\$114.87
CA2	\$108.90
CA1	\$101.97
IB2	\$108.92
IB1	\$101.13
IA2	\$91.91
IA1	\$86.82
BB2	\$106.84
BB1	\$96.06
BA2	\$90.08
BA1	\$80.90
PE2	\$115.36
PE1	\$108.72
PD2	\$110.40
PD1	\$103.53
PC2	\$100.69
PC1	\$96.30
PB2	\$93.58
PB1	\$88.75
PA2	\$82.93
PA1	\$77.86

Default when Minimum Data Set assessment data are incomplete	\$77.86
Default when a Minimum Data Set assessment is missing.	\$77.86
<b>Supplemental Payments:</b>	
Ventilator--Continuous	\$122.40
Ventilator--Less than Continuous	\$48.96
Pediatric Tracheostomy	\$73.44

Facilities participating in the Enhanced Direct Care Staff Rate will receive one of the following payment rates per day in addition to the above payment rates based upon their level of enrollment in the Enhanced Direct Care Staff Rate:

<b>Minutes Associated with Proposed Rate</b>	<b>Proposed Rate Per Diem</b>
1 LVN Minute = 2.13 Aide Minutes = 0.69 RN Minutes	\$0.34
2 LVN Minutes = 4.25 Aide Minutes = 1.39 RN Minutes	\$0.68
3 LVN Minutes = 6.38 Aide Minutes = 2.08 RN Minutes	\$1.02
4 LVN Minutes = 8.50 Aide Minutes = 2.78 RN Minutes	\$1.36
5 LVN Minutes = 10.63 Aide Minutes = 3.47 RN Minutes	\$1.70
6 LVN Minutes = 12.75 Aide Minutes = 4.16 RN Minutes	\$2.04
7 LVN Minutes = 14.88 Aide Minutes = 4.86 RN Minutes	\$2.38
8 LVN Minutes = 17.00 Aide Minutes = 5.55 RN Minutes	\$2.72
9 LVN Minutes = 19.13 Aide Minutes = 6.25 RN Minutes	\$3.06
10 LVN Minutes = 21.25 Aide Minutes = 6.94 RN Minutes	\$3.40
11 LVN Minutes = 23.38 Aide Minutes = 7.63 RN Minutes	\$3.74
12 LVN Minutes = 25.50 Aide Minutes = 8.33 RN Minutes	\$4.08
13 LVN Minutes = 27.63 Aide Minutes = 9.02 RN Minutes	\$4.42
14 LVN Minutes = 29.75 Aide Minutes = 9.71 RN Minutes	\$4.76
15 LVN Minutes = 31.88 Aide Minutes = 10.41 RN Minutes	\$5.10
16 LVN Minutes = 34.00 Aide Minutes = 11.10 RN Minutes	\$5.44
17 LVN Minutes = 36.13 Aide Minutes = 11.80 RN Minutes	\$5.78
18 LVN Minutes = 38.25 Aide Minutes = 12.49 RN Minutes	\$6.12
19 LVN Minutes = 40.38 Aide Minutes = 13.18 RN Minutes	\$6.46
20 LVN Minutes = 42.50 Aide Minutes = 13.88 RN Minutes	\$6.80
21 LVN Minutes = 44.63 Aide Minutes = 14.57 RN Minutes	\$7.14
22 LVN Minutes = 46.75 Aide Minutes = 15.27 RN Minutes	\$7.48
23 LVN Minutes = 48.88 Aide Minutes = 15.96 RN Minutes	\$7.82
24 LVN Minutes = 51.00 Aide Minutes = 16.65 RN Minutes	\$8.16
25 LVN Minutes = 53.13 Aide Minutes = 17.35 RN Minutes	\$8.50
26 LVN Minutes = 55.25 Aide Minutes = 18.04 RN Minutes	\$8.84
27 LVN Minutes = 57.38 Aide Minutes = 18.74 RN Minutes	\$9.18

Facilities that verify liability insurance coverage acceptable to HHSC will receive one of the following payment rates per day in addition to the above payment rates based upon the type of liability insurance coverage they maintain: [Figure 3]

<b>Type of Liability Insurance</b>	<b>Proposed Rate Per Diem</b>
General and Professional	\$1.93
Professional Only	\$1.77
General Only	\$0.16

**Methodology and justification.** The proposed rates were determined in accordance with the rate setting methodologies codified at 1 TAC Chapter 355, Subchapter C, §355.307 (relating to Reimbursement Setting Methodology) and §355.308 (relating to Direct Care Staff Rate Component) as proposed to be amended; and §355.312 (relating to Reimbursement Setting Methodology - Liability Insurance Costs). The proposed rule amendments, which are published in the May 23, 2008, issue of the *Texas Register* (33 TexReg 4062), require that rates for nursing facilities be determined using the Resource Utilization Groups (RUG) case mix classification system. These rates were subsequently adjusted in accordance with 1 TAC Chapter 355, Subchapter A, §355.101 (relating to Introduction) and §355.109 (relating to Adjusting Reimbursement When New Legislation, Regulations or Economic Factors Affect Costs). These changes are being made in accordance with the 2008-09 General Appropriations Act (Article IX, Additional Contingency and Other Provisions, §19.82, H.B. 1, 80th Legislature, Regular Session, 2007), which appropriated \$72.0 million in general revenue funds for State Fiscal Year 2009 for provider rate increases for the DADS Nursing Facility Program.

**Briefing Package.** A briefing package describing the proposed payment rates will be available on May 30, 2008. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Kimbra Rawlings by telephone at (512) 491-1174; by fax at (512) 491-1998; or by e-mail at Kimbra.Rawlings@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Kimbra Rawlings, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Kimbra Rawlings at (512) 491-1998; or by e-mail to Kimbra.Rawlings@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Kimbra Rawlings, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

TRD-200802653  
Steve Aragón  
Chief Counsel  
Texas Health and Human Services Commission  
Filed: May 21, 2008

## Public Notice

The Texas Health and Human Services Commission (HHSC) announces its intent to submit Transmittal Number TX 08-012, Amendment Number 816, to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendment is effective June 1, 2008.

This amendment updates the fiscal years in which HHSC intends to make Upper Payment Limit (UPL) payments to eligible children's hospitals. The current state plan language provides that HHSC will use \$12.5 million in general revenue each year to fund UPL payments for state fiscal years 2006 and 2007. The proposed language will allow HHSC to use \$12.5 million in general revenue to fund UPL payments to eligible children's hospitals in each fiscal year. The proposed state plan language removes the limit on the fiscal years in which UPL payments may be made to eligible children's hospitals.

The proposed amendment will continue annual aggregate expenditures for the children's hospital UPL program for future federal fiscal years at the amounts paid in FFY 2007.

To obtain copies of the proposed amendment or to submit written comments, interested parties may contact Kellie Shanahan by mail at Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, Mail Code H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1862; by facsimile at (512) 491-1998; or by e-mail at kellie.shanahan@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-200802656  
Steve Aragón  
Chief Counsel  
Texas Health and Human Services Commission  
Filed: May 21, 2008

## Texas Department of Insurance

### Company Licensing

Application to change the name of MIDWESTERN INSURANCE COMPANY to DRIVER'S INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Oklahoma City, Oklahoma.

Application to change the name of MILWAUKEE SAFEGUARD INSURANCE COMPANY to UNITRIN SAFEGUARD INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Brookfield, Wisconsin.

Application to change the name of AXA CORPORATE SOLUTIONS REINSURANCE COMPANY to COLISEUM REINSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Wilmington, Delaware.

Any objections must be filed with the Texas Department of Insurance, within 20 calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200802651  
Gene C. Jarmon  
Chief Clerk and General Counsel  
Texas Department of Insurance  
Filed: May 21, 2008

## Texas Lottery Commission

### Instant Game Number 1069 "Big Money Bingo"

A. The name of Instant Game No. 1069 is "BIG MONEY BINGO". The play style is "bingo".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1069 shall be \$5.00 per ticket.

1.2 Definitions in Instant Game No. 1069.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: B01, B02, B03, B04, B05, B06, B07, B08, B09, B10, B11, B12, B13, B14, B15,

I16, I17, I18, I19, I20, I21, I22, I23, I24, I25, I26, I27, I28, I29, I30, N31, N32, N33, N34, N35, N36, N37, N38, N39, N40, N41, N42, N43, N44, N45, G46, G47, G48, G49, G50, G51, G52, G53, G54, G55, G56, G57, G58, G59, G60, O61, O62, O63, O64, O65, O66, O67, O68, O69, O70, O71, O72, O73, O74, O75, 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, FREE SYMBOL, 1X SYMBOL, 2X SYMBOL, 3X SYMBOL and 5X SYMBOL.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:



Figure 1: GAME NO. 1069 - 1.2D

PLAY SYMBOL	CAPTION
B01	
B02	
B03	
B04	
B05	
B06	
B07	
B08	
B09	
B10	
B11	
B12	
B13	
B14	
B15	
I16	
I17	
I18	
I19	
I20	
I21	
I22	
I23	
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70	
71	
72	
73	
74	
75	
FREE	
1X SYMBOL	1 TIMES
2X SYMBOL	2 TIMES
3X SYMBOL	3 TIMES
5X SYMBOL	5 TIMES

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$5.00, \$10.00, \$15.00, or \$20.00.

G. Mid-Tier Prize - A prize of \$25.00, \$30.00, \$40.00, \$50.00, \$75.00, \$100, \$200, or \$500.

H. High-Tier Prize - A prize of \$1,000, \$2,000, \$5,000, \$20,000, or \$50,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number, and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1069), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 1069-0000001-001.

K. Pack - A pack of "BIG MONEY BINGO" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the pack; the back of ticket 075 will be revealed on the back of the pack. All packs will be tightly shrink-wrapped. There will be no breaks between the tickets in a pack. Every other book will reverse i.e., reverse order will be : the back of ticket 001 will be shown on the front of the pack and the front of ticket 075 will be shown on the back of the pack.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "BIG MONEY BINGO" Instant Game No. 1069 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "BIG MONEY BINGO" Instant Game is determined once the latex on the ticket is scratched off to expose 181 (one

hundred eighty-one) play symbols. The player must scratch off the "CALLER'S CARD" area to reveal 24 (twenty-four) Bingo Numbers and six (6) Bonus Numbers. The player must scratch all the Bingo Numbers on cards 1 through 6 that match the Bingo Numbers and Bonus Numbers on the "CALLER'S CARD". Each "CARD" has a corresponding prize box. Players win by matching those same numbers on the six Player's Cards. If the player finds a diagonal, vertical or horizontal straight line, the four corners of the grid, or an X pattern, they win a prize according to the corresponding prize box. Examples of play: If a player matches all bingo numbers plus the Free Space in a complete horizontal, vertical or diagonal line pattern in any one card, the player wins prize according to corresponding prize box. If the player matches all bingo numbers in all four (4) corners pattern in any one card, the player wins prize according to the corresponding prize box. If the player matches all bingo numbers plus Free Space to make a complete "X" pattern in any one card, the player wins prize according to the corresponding prize box. The player can only win one prize per "CARD". In the PRIZE MULTIPLIER PLAY AREA, the player must scratch the "PRIZE MULTIPLIER" BOX. If a player reveals a "2X", "3X" or "5X" play symbol, any prize won on cards 1 through 6 is multiplied by that amount. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 181 (one hundred eighty-one) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code, and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted, or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code, and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 181 (one hundred eighty-one) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective, or printed or produced in error;
16. Each of the 181 (one hundred eighty-one) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.
17. Each of the 181 (one hundred eighty-one) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

## 2.2 Programmed Game Parameters.

- A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.
- B. There will never be more than one win on a single PLAYER'S CARD.
- C. The CALLING AREA is defined as the combined areas of the CALLER'S CARD and the BONUS NUMBERS.
- D. To maximize play value, the CALLER'S CARD play symbols will be mixed, and there will be many "near wins" on the PLAYER'S CARDS.

E. A "near win" is a winner less one number except for the "X" where there are two numbers less, one in each diagonal line (one of which must be a corner).

F. No two identical PLAYER'S CARDS on a ticket.

G. There will be a large number of basic patterns used for both CALLER'S CARD and PLAYER'S CARDS such that the exposed PLAYER'S CARDS will provide no predictive information as to the prize level or prize type.

H. No duplicate play symbols on a PLAYER'S CARD.

I. On the PLAYER'S CARDS, the numbers will appear to be mixed randomly, but under each vertical line will appear only the numbers valid for that line. Example: 1 to 15 for line B, 16 to 30 for line I, 31 to 45 + FREE for line N, 46 to 60 for line G and 61 to 75 for line O.

J. In the center of each PLAYER'S CARD, there will be a FREE space.

K. No two adjacent tickets will have identical PLAYER'S CARDS.

L. No duplicate play symbols in The CALLING AREA.

## 2.3 Procedure for Claiming Prizes.

A. To claim a "BIG MONEY BINGO" Instant Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$25.00, \$30.00, \$40.00, \$50.00, \$75.00, \$100, \$200, or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, required to pay a \$25.00, \$30.00, \$40.00, \$50.00, \$75.00, \$100, \$200, or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "BIG MONEY BINGO" Instant Game prize of \$1,000, \$2,000, \$5,000, \$20,000, or \$50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "BIG MONEY BINGO" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller of Public Accounts, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Office of the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "BIG MONEY BINGO" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "BIG MONEY BINGO" Instant Game, the

Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 15,000,000 tickets in the Instant Game No. 1069. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1069 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$5	1,600,000	9.38
\$10	1,200,000	12.50
\$15	600,000	25.00
\$20	200,000	75.00
\$25	125,000	120.00
\$30	75,000	200.00
\$40	43,750	342.86
\$50	50,250	298.51
\$75	26,250	571.43
\$100	12,500	1,200.00
\$200	9,375	1,600.00
\$500	3,625	4,137.93
\$1,000	70	214,285.71
\$2,000	34	441,176.47
\$5,000	45	333,333.33
\$20,000	17	882,352.94
\$50,000	15	1,000,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.80. The individual odds of winning for a particular prize level may vary based on sales, distribution, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1069 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1069, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200802517  
Kimberly L. Kiplin  
General Counsel  
Texas Lottery Commission  
Filed: May 14, 2008



Instant Game Number 1070 "State Fair of Texas®"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1070 is "STATE FAIR OF TEXAS®". The play style is "key symbol match with win all".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1070 shall be \$5.00 per ticket.

1.2 Definitions in Instant Game No. 1070.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: PEPPER SYMBOL, BRANDING IRON SYMBOL, BOOT SYMBOL, SADDLE SYMBOL, HAT SYMBOL, SPUR SYMBOL, HORSE SYMBOL, STAR SYMBOL, HORSESHOE SYMBOL, GOLD BAR SYMBOL, SUN SYMBOL, MUSIC SYMBOL, BALLOON SYMBOL, GLOVE SYMBOL, APPLE SYMBOL, PAIL SYMBOL, COOLER SYMBOL, SHADES SYMBOL, PRETZEL SYMBOL, HAMBURGER SYMBOL, FRIES SYMBOL, HOT DOG SYMBOL, SODA SYMBOL, ICE CREAM SYMBOL, CAR SYMBOL, WAGON SYMBOL, TEXAS SYMBOL, \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100, \$1,000, and \$50,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1070 - 1.2D

<b>PLAY SYMBOL</b>	<b>CAPTION</b>
PEPPER SYMBOL	PEPPER
BRANDING IRON SYMBOL	BRAND
BOOT SYMBOL	BOOT
SADDLE SYMBOL	SADDLE
HAT SYMBOL	HAT
SPUR SYMBOL	SPUR
HORSE SYMBOL	HORSE
STAR SYMBOL	STAR
HORSESHOE SYMBOL	SHOE
GOLD BAR SYMBOL	GOLD
SUN SYMBOL	SUN
MUSIC SYMBOL	MUSIC
BALLOON SYMBOL	BLLN
GLOVE SYMBOL	GLOVE
APPLE SYMBOL	APPLE
PAIL SYMBOL	PAIL
COOLER SYMBOL	COOLER
SHADES SYMBOL	SHADES
PRETZEL SYMBOL	PRET
HAMBURGER SYMBOL	HAMBGR
FRIES SYMBOL	FRIES
HOT DOG SYMBOL	HOTDOG
SODA SYMBOL	SODA
ICE CREAM SYMBOL	ICECRM
CAR SYMBOL	CAR
WAGON SYMBOL	WAGON
TEXAS SYMBOL	WINALL
\$5.00	FIVE\$
\$10.00	TEN\$
\$15.00	FIFTN
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$1,000	ONE THOU
\$50,000	50 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$5.00, \$10.00, \$15.00, or \$20.00.

G. Mid-Tier Prize - A prize of \$25.00, \$50.00, or \$100.

H. High-Tier Prize - A prize of \$1,000 or \$50,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number, and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1070), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 1070-0000001-001.

K. Pack - A pack of "STATE FAIR OF TEXAS®" Instant Game tickets contains 075 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front



of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "STATE FAIR OF TEXAS®" Instant Game No. 1070 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "STATE FAIR OF TEXAS®" Instant Game is determined once the latex on the ticket is scratched off to expose 45 (forty-five) Play Symbols. If a player matches any of YOUR SYMBOLS play symbols to any of the WINNING SYMBOLS play symbols, the player wins PRIZE shown for that symbol. If a player reveals a State of Texas "TEXAS" play symbol, the player wins ALL 20 PRIZES shown instantly! No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 45 (forty-five) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code, and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted, or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code, and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 45 (forty-five) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective, or printed or produced in error;

16. Each of the 45 (forty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 45 (forty-five) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. No four or more matching non-winning prize symbols on a ticket.

C. The "TEXAS" (win all) play symbol will only appear as dictated by the prize structure.

D. No duplicate WINNING SYMBOLS play symbols on a ticket.

E. No duplicate non-winning YOUR SYMBOLS play symbols on a ticket.

F. The \$50,000 prize symbol will appear at least once on all tickets unless otherwise restricted by the prize structure.

G. Non-winning prize symbols will never be the same as the winning prize symbol(s).

#### 2.3 Procedure for Claiming Prizes.

A. To claim a "STATE FAIR OF TEXAS®" Instant Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$25.00, \$50.00, or \$100, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to pay a \$25.00, \$50.00, or \$100 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant

with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "STATE FAIR OF TEXAS®" Instant Game prize of \$1,000 or \$50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "STATE FAIR OF TEXAS®" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller of Public Accounts, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Office of the Attorney General;
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "STATE FAIR OF TEXAS®" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "STATE FAIR OF TEXAS®" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales, and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 7,080,000 tickets in the Instant Game No. 1070. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1070 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$5	755,200	9.38
\$10	566,400	12.50
\$15	188,800	37.50
\$20	330,400	21.43
\$25	47,200	150.00
\$50	35,400	200.00
\$100	7,788	909.09
\$1,000	1,062	6,666.67
\$50,000	8	885,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.66. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1070 without advance notice; at which point, no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1070, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200802518  
Kimberly L. Kiplin  
General Counsel  
Texas Lottery Commission  
Filed: May 14, 2008



Instant Game Number 1094 "\$130,000,000 Platinum Payout"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1094 is "\$130,000,000 PLATINUM PAYOUT". The play style is "key number match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1094 shall be \$50.00 per ticket.

1.2 Definitions in Instant Game No. 1094.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 2X SYMBOL, 10X SYMBOL, DOLLAR BILL SYMBOL, \$50.00, \$70.00, \$100, \$200, \$500, \$1,000, \$2,000, \$5,000, \$1 MILL, and \$5 MILL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1094 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
2X SYMBOL	WINX2
10X SYMBOL	WINX10
DOLLAR BILL SYMBOL	WINALL
\$50.00	FIFTY
\$70.00	SEVENTY
\$100	ONE HUND
\$200	TWO HUND
\$500	FIV HUND

<b>\$1,000</b>	<b>ONE THOU</b>
<b>\$2,000</b>	<b>TWO THOU</b>
<b>\$5,000</b>	<b>FIV THOU</b>
<b>\$1 MILL</b>	<b>ONE MILL</b>
<b>\$5 MILL</b>	<b>FIV MILL</b>

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Mid-Tier Prize - A prize of \$50.00, \$70.00, \$100, \$200, \$300, or \$500.

G. High-Tier Prize - A prize of \$1,000, \$2,000, \$20,000, \$50,000, \$1,000,000, or \$5,000,000.

H. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number, and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

I. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1094), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 020 within each pack. The format will be: 1094-0000001-001.

J. Pack - A pack of "\$130,000,000 PLATINUM PAYOUT" Instant Game tickets contains 020 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 001 and 020 will both be exposed.

K. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

L. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "\$130,000,000 PLATINUM PAYOUT" Instant Game No. 1094 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "\$130,000,000 PLATINUM PAYOUT" Instant Game is determined once the latex on the ticket is scratched off to expose 65 (sixty-five) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any of the WINNING NUMBERS play symbols, the player wins PRIZE shown for that number. If a player reveals a "2X" play symbol, the player wins DOUBLE the PRIZE shown for that symbol. If a player reveals a "10X" play symbol, the player wins 10 TIMES the PRIZE shown for that symbol. If the player reveals a "DOLLAR BILL" play symbol, the player wins ALL 30 PRIZES instantly! No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 65 (sixty-five) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code, and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted, or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code, and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 65 (sixty-five) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective, or printed or produced in error;
16. Each of the 65 (sixty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 65 (sixty-five) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

## 2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

C. No duplicate WINNING NUMBERS play symbols on a ticket.

D. No five or more matching non-winning prize symbols on a ticket.

E. The \$1,000,000 and \$5,000,000 prize symbols will each appear on every ticket unless otherwise restricted.

F. Non-winning prize symbols will not match winning prize symbols on a ticket.

G. The "2X" (doubler), "10X" (win x 10), and the "DOLLAR BILL" (win all) play symbols will only appear on winning tickets as dictated by the prize structure.

H. When the "DOLLAR BILL" (win all) play symbol appears, there will be no occurrence of any YOUR NUMBERS play symbols matching any WINNING NUMBERS play symbols.

## 2.3 Procedure for Claiming Prizes.

A. To claim a "\$130,000,000 PLATINUM PAYOUT" Instant Game prize of \$50.00, \$70.00, \$100, \$200, \$300, or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to pay a \$50.00, \$70.00, \$100, \$200, \$300, or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "\$130,000,000 PLATINUM PAYOUT" Instant Game prize of \$1,000, \$2,000, \$20,000, \$50,000, or \$1,000,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the

event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. To claim a "\$130,000,000 PLATINUM PAYOUT" top level prize of \$5,000,000, the claimant must sign the winning ticket and present it at Texas Lottery Commission headquarters in Austin, Texas. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. As an alternative method of claiming a "\$130,000,000 PLATINUM PAYOUT" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

E. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller of Public Accounts, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Office of the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

F. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "\$130,000,000 PLATINUM PAYOUT" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "\$130,000,000 PLATINUM PAYOUT" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales, and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 3,600,000 tickets in the Instant Game No. 1094. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1094 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$50	540,000	6.67
\$70	495,000	7.27
\$100	180,000	20.00
\$200	58,890	61.13
\$300	9,600	375.00
\$500	12,000	300.00
\$1,000	4,200	857.14
\$2,000	1,500	2,400.00
\$20,000	50	72,000.00
\$50,000	20	180,000.00
\$1,000,000	6	600,000.00
\$5,000,000	3	1,200,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 2.77. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1094 without advance notice; at which point, no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1094, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200802519

Kimberly L. Kiplin  
General Counsel  
Texas Lottery Commission  
Filed: May 14, 2008

## Public Utility Commission of Texas

Notice of Application for Amendment to Service Provider  
Certificate of Operating Authority

On May 2, 2008, Austin Bestline filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA

Certificate Number 60033. Applicant intends to reflect a change in corporate restructuring and ownership, and a name change.

The Application: Application of Austin Bestline for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 35635.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than June 4, 2008. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 35635.

TRD-200802580

Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: May 16, 2008



#### Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on May 12, 2008, for retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Always Electric, LLC for Retail Electric Provider Certification, Docket Number 35663 before the Public Utility Commission of Texas.

Applicant's requested service area by geography includes the entire State of Texas.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than June 6, 2008. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 35663.

TRD-200802533

Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: May 15, 2008



#### Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on May 13, 2008, for retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of GIM Retail Energy, LLC for Retail Electric Provider Certification, Docket Number 35664 before the Public Utility Commission of Texas.

Applicant's requested service area by geography includes an area defined by customers; specifically, Equistar Chemicals, LP, the single retail customer.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than June 6, 2008. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 35664.

TRD-200802534

Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: May 15, 2008



#### Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on May 14, 2008, for retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Bounce Energy, Inc. for Retail Electric Provider (REP) Certification, Docket Number 35670 before the Public Utility Commission of Texas.

Applicant's requested service area by geography includes the entire State of Texas.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than June 6, 2008. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 35670.

TRD-200802635

Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: May 20, 2008



#### Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on May 14, 2008, for retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Lehman Power Services LLC for Retail Electric Provider (REP) Certification, Docket Number 35671 before the Public Utility Commission of Texas.

Applicant's requested service area by geography includes the entire State of Texas.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than June 6, 2008. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 35671.

TRD-200802634



Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: May 20, 2008

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**Notice of Application for a Certificate to Provide Retail Electric Service**

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on May 14, 2008, for retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Credit Suisse Energy LLC for Retail Electric Provider (REP) Certification, Docket Number 35676 before the Public Utility Commission of Texas.

Applicant's requested service area by geography includes the entire State of Texas.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than June 6, 2008. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 35676.

TRD-200802633  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: May 20, 2008

◆ ◆ ◆  
**Notice of Application for an Amendment to a State-Issued Certificate of Franchise Authority**

The Public Utility Commission of Texas received an application on May 15, 2008, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of GTE Southwest Incorporated d/b/a Verizon Southwest to Amend a State-Issued Certificate of Franchise Authority, Project Number 35679 before the Public Utility Commission of Texas.

The requested CFA service area includes the addition of the cities of Allen, Carrollton, Colleyville, Farmers Branch, Frisco, Grapevine, Keller, Plano, and Watauga, and the towns of Bartonville, Double Oak, and Flower Mound.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 35679.

TRD-200802636  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: May 20, 2008

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**Supreme Court of Texas**

**Order Adopting Amendments to State Bar Rules**

**Misc. Docket No. 08-9048**

**ORDERED** that:

1. The following amendments to Articles I and III of the State Bar Rules, which were approved by the State Bar Board of Directors in substantially similar form on January 25, 2008, are hereby adopted by the Court.

2. These changes, with any modifications made after public comments are received, take effect September 1, 2008. Comments may be submitted to the Court in writing on or before July 31, 2008 and should be directed to: Rules Attorney, P.O. Box 12248, Austin TX 78711, or may be emailed to [rules@courts.state.tx.us](mailto:rules@courts.state.tx.us).

3. The Clerk is directed to:

- a. file a copy of this Order with the Secretary of State;
- b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
- c. send a copy of this Order to each elected member of the Legislature; and
- d. cause a copy of this Order to be posted on the website of the Supreme Court of Texas at <http://www.supreme.courts.state.tx.us>.

In Chambers, this 14th day of May, 2008.

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Wallace B. Jefferson, Chief Justice

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Nathan L. Hecht, Justice

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Harriet O'Neill, Justice

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J. Dale Wainwright, Justice

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Scott Brister, Justice

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David M. Medina, Justice

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Paul W. Green, Justice

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Phil Johnson, Justice

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Don R. Willett, Justice

**Article I -- Definitions**

7. "Registered Address" is the address of a member as shown on the membership rolls maintained by the State Bar on behalf of the clerk of the Supreme Court. A member's registered address will be used for receiving official notices from the State Bar including membership compliance information, member benefits, and disciplinary matters.

**Article III -- Membership**

## Section 2. Enrollment in the State Bar

A. Each person who becomes is licensed to practice law in Texas shall, in accordance with the applicable Supreme Court rules governing admission to the bar, no earlier than ten (10) days prior to and no later than ten (10) days following the date of admission, (i) file with the clerk an enrollment form stating his or her name, permanent place of residence, principal place of practice preferred physical address or post office box, telephone number, facsimile number and e-mail address, and such other information as may be required by the clerk and (ii) pay all fees and assessments then required; and ‡ This filing and payment shall constitute enrollment in the State Bar. The preferred physical address or post office box shall constitute the member's registered address and will be used for receiving official notices from the State Bar, including membership compliance information, member benefits, and disciplinary matters. Residential addresses and phone numbers shall be considered confidential and will not be disclosed to the public unless authorized by the member. If a member designates their residential address as the registered address and does not authorize disclosure to the public, the member must provide an additional alternate address that may be disclosed to members of the public. A member is mandated to notify the State Bar of any change in the information required above within thirty (30) days of such change.

TRD-200802652

Jody Hughes  
Rules Attorney  
Supreme Court of Texas  
Filed: May 21, 2008



### Order Adopting Amendments to Texas Rules of Disciplinary Procedure

Misc. Docket No. 08-9047

**ORDERED** that:

1. The following amendments to the Texas Rules of Disciplinary Procedure, which were approved by the State Bar Board of Directors in substantially similar form on April 25, 2008, are hereby adopted by the Court.
2. These changes, with any modifications made after public comments are received, take effect September 1, 2008. Comments may be submitted to the Court in writing on or before July 31, 2008 and should be directed to: Rules Attorney, P.O. Box 12248, Austin TX 78711, or may be emailed to [rules@courts.state.tx.us](mailto:rules@courts.state.tx.us).
3. The Clerk is directed to:
  - a. file a copy of this Order with the Secretary of State;
  - b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
  - c. send a copy of this Order to each elected member of the Legislature; and
  - d. cause a copy of this Order to be posted on the website of the Supreme Court of Texas at <http://www.supreme.courts.state.tx.us>.

In Chambers, this 14th day of May, 2008.

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Wallace B. Jefferson, Chief Justice

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Nathan L. Hecht, Justice

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Harriet O'Neill, Justice

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J. Dale Wainwright, Justice

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Scott Brister, Justice

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David M. Medina, Justice

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Paul W. Green, Justice

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Phil Johnson, Justice

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Don R. Willett, Justice

## Texas Rules of Disciplinary Procedure

### 1.06 Definitions

A. "Address" means the registered address provided by the attorney the subject of the Grievance as shown on the membership rolls maintained by the State Bar on behalf of the Clerk of the Supreme Court at the time of receipt of the Grievance by the Chief Disciplinary Counsel.

TRD-200802586

Jody Hughes  
Rules Attorney  
Supreme Court of Texas  
Filed: May 19, 2008



## The Texas A&M University System

### Notice of Entering into a Major Consulting Services Contract

In accordance with the provisions of Texas Government Code, Chapter 2254, The Texas A&M University System has entered into a contract for consulting services more particularly described in the Request for Qualifications for an Assessment Consultant (RFQ01 OTC-8-005), published in the March 21, 2008, issue of the *Texas Register* (33 TexReg 2618). The consultant will perform marketing assessments for nanotechnology for the Office of Technology Commercialization at the A&M System.

The Name and Address of Consultant is as follows: Clive P. Bosnyak of Planned Innovation Institute, Inc., 12001 Settlers Trail, Dripping Springs, TX 78620.

The A&M System will pay an amount not to exceed \$50,000.00. The contract will begin on May 5, 2008 and shall terminate ninety days thereafter.

If any, the consultant will submit documents, films, recordings, or reports compiled by the consultant under the contract to TAMUS, no later than one year after completion of services.

Any questions regarding this posting should be directed to: Don Barwick, HUB & Procurement Manager, Office of HUB & Procurement Programs, The Texas A&M University System, 200 Technology Way, Ste. 1273, College Station, TX 77845, Voice: (979) 458-6410, E-mail: [dbarwick@tamu.edu](mailto:dbarwick@tamu.edu).

TRD-200802516

Don Barwick  
HUB and Procurement Manager  
The Texas A&M University System  
Filed: May 14, 2008

## Texas Department of Transportation

### Aviation Division - Request for Proposal for Aviation Architectural/Engineering Services

The City of Terrell, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation architectural/engineering design services described below:

Airport Sponsor: City of Terrell. TxDOT CSJ No. 08TBTEREL. Scope: Provide architectural/engineering design services to design and construct new terminal building, auto parking, and entrance road at the Terrell Municipal Airport.

The HUB goal is race neutral. TxDOT Project Manager is John Greer, P.E.

To assist in your proposal preparation the criteria, 5010 drawing, and most recent airport layout plan are available online at [www.txdot.gov/avn/avninfo/notice/consult/index.htm](http://www.txdot.gov/avn/avninfo/notice/consult/index.htm) by selecting "Terrell Municipal Airport."

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Architectural/Engineering Services Proposal". The form may be requested from TxDOT Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at [www.txdot.gov/services/aviation/consultant.htm](http://www.txdot.gov/services/aviation/consultant.htm). The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

#### Please note:

Five completed, unfolded copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than June 20, 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Edie Stimach.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluation architectural/engineering proposals can be found at <http://www.txdot.gov/services/aviation/consultant.htm>. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it

necessary. If interviews are conducted, selection will be made following interviews.

If there are any procedural questions, please contact Edie Stimach, Grant Manager at 1-800-68-PILOT at extension 4518. For technical questions, please contact John Greer, at 1-800-68-PILOT at extension 4528.

TRD-200802637  
Joanne Wright  
Deputy General Counsel  
Texas Department of Transportation  
Filed: May 20, 2008

### Public Notice of Final Environmental Impact Statement (Grand Parkway Segment F-1, Harris County, Texas)

Pursuant to Title 43, Texas Administrative Code, §2.5(e)(8)(B), the Texas Department of Transportation is advising the public of the availability of the Final Environmental Impact Statement (FEIS) for the proposed construction of State Highway 99, US 290 to SH 249 (the Grand Parkway Segment F-1) northwest of Houston in Harris County, Texas. Comments regarding the FEIS should be submitted to The Grand Parkway Association, Attention: Segment F-1 Comments, located at 4544 Post Oak Place, Suite 222, Houston, Texas 77027 or the Director of Project Development at the Texas Department of Transportation's Houston District Office located at 7600 Washington Avenue, Houston, Texas prior to 5:00 p.m. on June 30, 2008. The Texas Department of Transportation's mailing address is P.O. Box 1386, Houston, Texas 77251-1386.

The purpose of the proposed action is to provide improved access to the existing and future thoroughfare system, reduce area traffic congestion, improve safety, and improve area-wide mobility. A full range of alternatives were identified and evaluated for Segment F-1 at the corridor level (five corridors), transportation mode level (No Build, Transportation System Management Alternatives (TSM), Travel Demand Alternatives (TDM), and Modal Alternatives), and at the alignment level. The proposed action consists of the construction of a controlled access tollway from US 290 to SH 249 in Harris County, a distance ranging from 12.03 to 12.73 miles, depending on the alternative alignment considered. The proposed facility will consist of a four-mainlane controlled access tollway within a 400-foot (ROW) width. A total of three build alternative alignments, in addition to the No-Build alternative, have been presented in the FEIS. All three alternative alignments lie between US 290 and SH 249 in a west-east direction. Alternative Alignment A begins at US 290 and traverses mainly through the center of the study area. This alignment alternative terminates at SH 249, approximately 1.6 miles east of Willow Creek and is 12.7 miles in length. Alternative Alignment B starts at the same location as Alternative Alignment A but traverses mainly through the southern portion of the study area. Alternative Alignment B terminates at the same location of Alternative Alignment A, but is 12.1 miles in length. Alternative Alignment C starts at the western portion of the study area and traverses east mainly through the north-western portion of the study area. Alternative Alignment C terminates at the same location as Alternative Alignments A and B and is 12.7 miles in length.

The preferred corridor and transportation mode and the recommended alternative alignment as presented in the DEIS, were selected after careful consideration and assessment of the potential environmental impacts and evaluation of agency and public comments. After consideration of all agency and public comments received on the DEIS as well as updated environmental data, the Grand Parkway Association, in coordination with TxDOT and FHWA, selected a Preferred Alternative

Alignment. It was determined after careful review of the DEIS comments that the Recommended Alternative Alignment as presented in the DEIS be carried forward as the Preferred Alternative Alignment. The preferred build alternative that has emerged from the study was proposed on the basis of its ability to best facilitate the project's Need and Purpose while minimizing impacts to the natural, physical, and social environments. The Preferred Build Alternative Alignment begins and terminates at the same location as Alternatives A and B, and is 12.03 miles in length. The preferred alternative alignment for Segment F-1 would require the acquisition of new ROW (616 acres), the adjustment of utility lines, and the filling of aquatic resources including jurisdictional wetlands (28.68 acres). The Preferred Alignment as presented in the FEIS would displace three residential properties. No business displacements would occur, and no archeological sites, historic properties, or endangered species are expected to be affected.

Copies of the FEIS and other information about the project may be obtained at the Texas Department of Transportation's Houston Dis-

trict Office at the previously mentioned address. For further information, please contact David Gornet at (713) 965-0871 or Pat Henry, P.E. at (713) 802-5241. Copies of the FEIS may also be reviewed at the offices of the Grand Parkway Association, located at 4544 Post Oak Place, Suite 222, Houston, Texas; at the Grand Parkway Association website, [www.grandpky.com](http://www.grandpky.com); at the Houston Public Library, Central Branch, 500 McKinney, Houston, Texas; at the Harris County Public Library, Tomball Branch, 30555 Tomball Parkway, Tomball, Texas; and at the Harris County Public Library, Northwest Branch, 11355 Regency Green Drive, Cypress, Texas.

TRD-200802648

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: May 21, 2008

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### How to Use the Texas Register

**Information Available:** The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

**Attorney General** - summaries of requests for opinions, opinions, and open records decisions.

**Secretary of State** - opinions based on the election laws.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**Emergency Rules** - sections adopted by state agencies on an emergency basis.

**Proposed Rules** - sections proposed for adoption.

**Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

**Adopted Rules** - sections adopted following public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Texas Department of Banking** - opinions and exempt rules filed by the Texas Department of Banking.

**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Transferred Rules** - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

**In Addition** - miscellaneous information required to be published by statute or provided as a public service.

**Review of Agency Rules** - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

**How to Cite:** Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 30 (2005) is cited as follows: 30 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

**How to Research:** The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in an .html

version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (800) 226-7199.

### Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite:** Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register* (January 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

*Part I. Texas Department of Human Services*

40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).